United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7021

In The

United States Court of Appeals

For The Second Circuit

B

P/S

FREDERIC P. WIEDERSUM ASSOCIATES,

Plaintiff-Appellee,

vs.

NATIONAL HOMES CONSTRUCTION CORPORATION,

Defendant-Appellant.

On Appeal From the United States District Court for the Eastern District

JOINT APPENDIX

Volume II, pp. 263a - 526a

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A He might have said that.

Q But in any case no one from Wiedersun attended?

A No, sir.

Q Now, as far as you know, did anyone from your office visit the site at any other time?

A No, sir.

Q No, sir, what does that mean?

A No one from our office visited the site at any other time.

Q Now, Mr. Laverty, what is it that you would have, or your office would have, to let you know what sort of land you were dealing with? Whether it was swamp, or whether it was hard land or what?

A What information we would have had?

Q Yes, and where?

A We would have existing drawings sent to our office by the Navy.

Q Yes?

A That would be within the borings, the condition of the soil, and the existing utilities.

Q And were there any swamp areas on the site for this project?

A I don't know. I never visited the site, and I wasn't that personally involved.

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Q You didn't do the drawings?

A No, sir.

Q Now, Mr. Laverty, the project came to your attention, is that right?

A From South Carolina.

Q You are the person who had all the contact with the Navy, is that correct?

A So to speak, yes.

Q You sent out the plans to National?

A Yes, sir.

Q And contract documents?

A What?

Q Contract documents, the document needed to prepare the proposal? You sent those to Mr. Duley?

A Yes, sir.

Q Would it be fair to say your function at Wiedersun was to make sure things were moving along smoothly? To make sure all of the people have the necessary information?

A No, sir,it was not my function.

Q Was that your function with respect to this job?

A No, sir. I think I volunteered, or Mr. Voorneveld might have asked me to assist in doing this, because it was a very critical time.

Q And everyone was very busy?

A Yes, as on the Warminister.

Q When did Mr. Voorneveld as you to assist on this, to make sure things moved smoothly, and that people got the information they needed?

A Not necessarily so, we just worked very closely together. I helped in the beginning and I helped him in the end.

Q Now, to whom did you first report the fact in the office, the fact that a proposal had not been submitted?

A Would you repeat that?

Q To whom did you first report to in your office the fact that a proposal had not be submitted?

A To Mr. Wiedersun, Frederick J.

Q And what was Mr. Wiedersun's reaction? Was it anger?

A I would say disappointment. His immediate reaction, of course, was confusion. He had no idea that this would happen.

Q I was asking about his reaction. Did he ask you at any point whether you were certain that your office had got everything that National needed over to it?

A He knew that.

Q He knew what?

A He knew that we sent them the plans and everything they needed. We felt everything was copacetic.

Q He knew you had sent the plans?

A If he knew I had sent the plans?

Q He knew you had sent the plans?

A Yes, sir.

Q Did you assure him of that fact that you had sent them?

A Did I -- Could you repeat that?

Q Yes.

MR. MORRISON: When?

Q At any point. How did he know that you had sent the plans? You said he knew that you had sent the plans?

A I had a memo dated the 30th that indicated that I had sent the plans. And then my letter to Mr. Payne on the 4th.

Q So he knew that you had sent them?

A That I had put them on the plane, yes, sir.

Q Now, the letter that you sent to Mr. Gleason in January, do you recall that letter?

A January, no.

Q No? I'm sorry, January 23rd.

A January 23rd, yes, sir.

Q Excuse me?

A Yes, sir.

Q Now, what sort of information is -- is that the letter?

A Yes, sir.

Q Now, what did you know about the South Carolina project at that time?

A What did I know about it?

Q Yes.

A Just, I guess you could call it a proposal invitation informing us as to the overall cost of the project.

Q Do you recall receiving Mr. Gleason's letter to you of January 29th?

A Yes, sir.

Q Marked as Plaintiff's Exhibit 5 in Evidence?

A Yes, sir.

Q Now, at that time, Mr. Laverty, your company hadn't decided, had it, to go ahead and prepare this project?

A At this time, no.

Q It had not?

A No.

Q The fact is it would not reach a decision to even proceed to draft the preliminary plans until after the proposal conference, isn't that right?

A If we received correspondence --

Q I want you to answer my question.

A No, we wouldn't start the drawing plans until after the conference.

Q And at the time you received that letter you didn't even have the criteria from the Navy, did you?

A That is correct.

Q All you had was one sheet indicating that the Navy was interested in having a project built, isn't that correct?

A Yes, sir.

Q Now, Mr. Laverty, when did you become aware of what number had been assigned to this job?

A What?

Q When did you become aware of what number had been assigned to this job by the Navy?

A When the Navy sent us the plans.

Q When the Navy sent you the plans? What does that mean, the plans?

A The plans that we sent away for, the invitation proposal I sent for the plans which I told Mr. Gleason I would forward to him.

Q This would have been exactly when?

A This would be the 16th when we wrote for the proposal.

Q When would you have got that information?

A Prior to my sending that directly out to Mr. Payne. That was on the 7th that I sent that out.

Q Perhaps we can spread this out in front of you there.

A Yes.

Q Now, Exhibit 11 is the set of plans that you -- No, I withdraw that.

Exhibit 11 is a set of plans that you testified you sent to Mr. Duley on the 30th, is that correct?

A Yes.

Q It is a set with no revisions on them?

A Revision dates.

Q And Exhibit 16 is a set that was sent with your letter of the fourth, is that correct?

A Yes, sir.

Q Now, I ask you, Mr. Laverty, to look at what I am going to ask to have marked as Defendant's Exhibit --

THE CLERK: A group of drawings marked for Identification as Defendant's Exhibit A.

Q Now, Mr. Laverty, do you recall me showing you a copy of what has been marked as Defendant Exhibit A at your deposition?

A I couldn't swear it is an exact drawing.

Q I ask you to read what has been marked in the corner up here (indicating), at the top first page, just read it.

A I guess that would mean D-e-f-E-x number 9-12-74, is that correct, sir?

Q Defendant's Exhibit H, 9-12-74?

A Is that what that means?

Q Well, that is what it says.

A Well, I couldn't make out Defendant's Exhibit. I made out 9-12-74.

Q Do you recall being asked the following question at your deposition --

MR. MORRISON: What page are you referring to?

MR. SIMMONS: I'm sorry, 68.

Q "Question: Mr. Laverty, I hand you Defendant's Exhibit H marked at a previous examination in this case, and ask you whether the plans you referred to in the letter of April 4th, just marked, are those plans?

"Answer: Yes, this is one set of them. It looks like -- I believe this is the total set of plans, to my knowledge, it would be.

"They are all here."

Now I ask you, Mr. Laverty --

A Yes, sir.

Q To look carefully at Defendant's Exhibit A and tell me which of the set of plans Exhibit 16 and Exhibit 11 that this is a copy of.

A These are photostats of the plans that were sent down on the 30th.

MR. MORRISON: Excuse me. I would like counsel to clarify what he has put in front of the witness are the very documents that were marked on the deposition, or whether this is a copy or what?

MR. SIMMONS: The very documents that were on the examination -- If Mr. Morrison would like to inspect them, he can see the reporter's original marking on the top.

MR. MORRISON: Yes, I would like to see that.

MR. SIMMONS: I would ask, your Honor, that this be admitted in evidence at this time.

MR. MORRISON: I would like to see them first.

MR. SIMMONS: Yes.

THE COURT: This might be an appropriate time to take ten minutes recess.

Ladies and gentlemen of the jury, you may withdraw to the jury room for the time being.

(Whereupon, there was a 10-minute recess.)

MR. SIMMONS: Mr. Morrison, have you finished inspecting these?

MR. MORRISON: Yes. I have no objection to these plans. I do want to make it clear on the record that these are photocopies that our office made of the original blue prints and given to you. Our office made these and submitted them to Mr. Simmons. They were not given to his firm by the client.

THE CLERK: Documents marked for Identification as Defendant's Exhibit A, now received in Evidence.

CROSS-EXAMINATION CONTINUED

BY MR. SIMMONS:

Q Now, Mr. Laverty, I ask you to inspect Defendant's Exhibit A and tell me what it is a copy of. Is it a copy of your Exhibit 16 or Exhibit 11?

A Exhibit 11 was the plan submitted on the 30th.

MR. MORRISON: Well, don't you look at the two exhibits 11 and 16?

THE WITNESS: I'm sorry, I didn't see 11 up here.

MR. MORRISON: And then you will be able to establish that.

THE WITNESS: This is 11.

Q This is Exhibit 11?

A Yes, sir.

Q Now, just to clarify for the jury, when was Exhibit 11 sent? What is your testimony as to when it was sent?

A March 30th.

Q That was not the set of plans that was sent on March 4th?

A No.

Q It was sent with your letter on March 4th?

A No.

MR. MORRISON: On the 4th?

MR. SIMMONS: Excuse me, April the 4th.

Q It definitely was not?

A No, sir.

Q Do you recall these questions and these answers, Mr. Laverty? "Question: But the plan Exhibit A which has been marked as Defendant Exhibit A that you have in front of you, definitely would have been at least one set of the complete architectural-engineering drawings that you referred to in your letter to Mr. Payne of April 4th?

"Answer: Of April 4th?

"Question: Yes.

"Answer: Yes, this is one set."

At your deposition then you testified that the plans you sent out, that you testify now that you sent out on April 30th, were sent out on April 4th with your letter of April 4th; isn't that right?

A What I testified to, I made a mistake.

Q You were confused?

A These are blue prints, and I looked at it quickly and did not notice the revision date.

Q You were confused then?

A At that time.

Q But you are not confused?

A I didn't have time to investigate, sir.

MR. SIMMONS: I have no further questions at this time, your Honor.

REDIRECT EXAMINATION

BY MR. MORRISON:

Q Mr. Laverty, I refer you to Plaintiff's Exhibit 17 which is your letter of April 4th to Mr. Payne following the final plans; do you recall Mr. Simmons asking you whether in that letter you referred to the bid documents?

A I am sorry, would you repeat the question?

Q Do you recall Mr. Simmons just asking whether you referred to bid documents in that letter?

A I did not refer to it. As far as the context of

the words, "Bid documents," the words "architectural-engineering drawing," would mean bid documents.

Q Was there something different in the early letter, the early shipment that was not in the later shipment?

A Yes, the 30th shipment was the Government forms.

Q The 30th shipment was the Government forms?

A Yes, sir.

Q Was there anything in the later shipment that you referred to in Plaintiff's Exhibit 17 other than the architectural drawings?

A No, sir, it is just eight sets of architectural drawings.

Q Now, going back to the event of March 30th, you testified that the blue prints came in from the duplicator in the morning, is that right?

A Yes.

Q And you stated that you were there when they came in?

A Yes, sir.

Q Were you involved in the packaging of these?

A I helped. I couldn't say that I actually wrapped them personally, but, you know, I stuck the Government forms in the side of the package when they were being wrapped. And from there on the clerk finished wrapping them

up.

Q But you were in the room when that was done?

A Yes, because I put the label on them.

Q Now, who took the package to the airport?

A I did.

Q You did?

A Yes, sir.

Q Now, what sizes were the contract documents that were sent in addition to the plans, what size were they?

A Eight and a half by eleven -- you mean the Government forms?

Q Yes. Eight and a half by eleven?

A Yes.

Q Now, on March 30th when you went to the airport was the package you took to the airport a package of eight and a half by eleven size?

A No, sir.

Q What size package?

A It was the size of a set of plans. It was a elongated package.

Q Can you remember that?

A Yes, sir.

Q Now, regarding your deposition, I would like

to read into the record a portion of the deposition that I don't believe was read by Mr. Simmons. This appears on page 64, a question by Mr. Simmons of Mr. Laverty --

MR. SIMMONS: Your Honor, I object to this. Is he reading a portion of an answer that I didn't read completely? If that is the case, I have no objection. But I do object to him reading the deposition into the record, the deposition of his client.

MR. MORRISON: You read in statements which you believed came about later in the deposition where this witness reportedly said he wasn't sure what was said on March 30th. I propose to read into the record an earlier question and answer which will clarify that.

THE COURT: You may do that.

BY MR. MORRISON:

Q "Question: --" a question by Mr. Simmons to Mr. Laverty: "Mr. Laverty, the letter --" and he is referring to the letter of March 30, 1973, "refers to the fact that bid documents for the South Carolina Project are enclosed. What are bid documents?

"Answer: I would assume at this point that they were the set of the necessary plans and -- that

would be needed for National to start their pricing. This I would -- I called Mr. Duley up and talked to him verbally on the telephone prior to this, and we agreed this would be the quickest way they could get the plans. I notified them by phone first before I put them on the plane, that they were coming down, and they were to pick them up at the airport upon their arrival."

Mr. Laverty, did you do anything to prepare for your deposition?

A No, sir.

Q That was taken by Mr. Simmons?

A No.

Q Do you recall when that was?

A The deposition date?

Q Yes.

A Just from the date of the plans here, I assume '74, sometime.

MR. MORRISON: Just to note for the record, the deposition was taken on August the 15th, 1974.

MR. SIMMONS: Excuse me?

MR. MORRISON: August --

MR. SIMMONS: I believe September the 16th, 1974. The 15th is the stipulation.

MR. MORRISON: I am sorry, September 16, 1974.

REDIRECT EXAMINATION CONTINUED

BY MR. MORRISON:

Q Prior to September 16, 1974, had you done anything to review what had happened back in 1973?

A No, sir.

Q Had you discussed these events with your attorney prior to that date?

A No, sir.

Q Had you discussed those events with anyone at Wiedersun prior to September 16th?

A No.

Q Now, at the time you signed your deposition did anyone tell you if you said something in the deposition which you felt was incorrect that you would have the right to change that and strike it out?

A No, sir, I didn't understand that.

Q Now, I believe you testified that you did have a conversation with Mr. Duley about the fact that these plans were being excessed, is that correct?

A Yes, sir.

Q Did you ever have any conversation with Mr. Duley where he asked you what had happened to the plans?

A No, sir.

Q Did anyone from National call you on or after the 30th and say what happens to the plans?

A No, sir.

Q Did anybody call you up on or after the 30th and say we are running out of time, I don't have the plans, and we can't do a bid?

A No, sir.

MR. MORRISON: I would like to have these marked as Plaintiff's Exhibits 20 and 21 for Identification.

THE CLERK: Three pages of Xerox receipts of Nassau Blue Print Services, Inc., dated 3-29, and 3-30, and 3-30, 1973, received as Plaintiff's Exhibit No. 20 for Identification.

Three pages indicating receipts of Nassau Blue Print Services, Inc., dated 4-4, 1973, for Identification, as Plaintiff's Exhibit 21.

BY MR. MORRISON:

Q Mr. Laverty, who is the company that does this duplicating for you?

A Nassau Blue Print.

Q Did they do it back in 1973?

A Yes.

Q Are they the ones that did the duplicating of the two sets of plans that you have testified to?

A Yes.

Q In the normal course of business did you get billed by Nassau Blue Print for their work?

A Yes, sir.

Q Does your firm keep copies of those bills?

A Yes, we do.

Q Have you had occasion to investigate your files to see if there were any bills from Nassau Blue Print at the time in question?

A Yes, I did.

Q When did you do that?

A This was after a conversation with you.

Q Recently?

A Recently.

Q I show you Plaintiff's Exhibits 20 and 21 for Identification, and ask you if those are the bills in question.

A Yes, sir.

MR. MORRISON: I offer these into evidence as Plaintiff's Exhibits 20 and 21.

MR. SIMMONS: May I have a moment, your Honor.

THE COURT: Mark them.

MR. SIMMONS: May I have a voir dire for a moment?

THE COURT: Yes.

BY MR. MORRISON:

Q Now, Mr. Laverty, you said that you recently found those receipts in the company's files, Wiedersun's files?

A Yes, sir.

Q Does your company have a great deal of blue print work copying?

A You mean tracing?

Q Tracings, et cetera, et cetera.

A Yes, sir.

Q Do you find any reference on those receipts to National Home Construction, or to this job?

A Yes, sir, job number.

Q Job number what?

A 7318.

Q And what is 7318?

A That is the South Carolina job assigned to our office. It does appear on the drawings right there.

MR. SIMMONS: I have no objection, your Honor.

THE CLERK: Documents marked for Identification as Plaintiff's Exhibits 20 and 21 now received in Evidence.

(Continued on next page.)

REDIRECT EXAMINATION CONTINUED

BY MR. MORRISON:

Q Mr. Laverty, I am showing you Plaintiff's Exhibit 20 for Identification, can you tell from this receipt how many separate tracings were sent out for duplicating?

A Yes, on the first receipt 7- 30 by 40 tracings, we request 10 drawings. 4 30 by 40 and we requested 10 drawings. Next, 9 30 by 40 and we requested 10 drawings. This is all prior to the 30th mailing date.

Q In other words, you had 10 copies of each tracing?

A Yes.

Q What was the total number of tracings?

A 20, sir.

Q Now, referring to Plaintiff's Exhibit 21, how many tracings were sent out at that time?

A Four 30 by 40, 12 prints each. 17- 30 by 40, 12 prints each, for a total of 21.

Q And you got 12 prints?

A 12 prints, complete set of plans made up at that time.

Q Now, Mr. Simmons asked you if it was correct that you understood that Mr. Duley was only involved in receiving the so-called contract forms on this project, is

that correct?

A Yes.

Q And that was your understanding?

A Yes.

Q But you did send him both the plans and the forms?

A Yes.

Q Any reason why you did not send the plans to Mr. Payne or Mr. Gleason?

A We wanted to get them down there as quickly as possible,both the plans and the forms for them to work on. They were going out and so it seemed appropriate.

Q Had you worked with Mr. Duley in the past in previous projects?

A I had contact with him on the Warminister Project.

Q Now, you testified on cross-examination that Mr. Payne was pressing you, I believe was the word you used, to give the drawings to them six days in advance of April 6th, is that correct?

A Yes.

Q Did Mr. Payne pressure you after March 30th about this matter?

A No, sir.

Q I believe you stated you were not represented at the plea proposal conference?

A That is correct, sir.

Q Why is that?

A Mr. Payne after some conversation he decided it was not necessary for us to attend if we gave him some questions to ask, which we did.

Q Had you had any prior experience with regard to attending pre-conferences?

A Yes. At the Warminister Pennsylvania job which was the first Navy housing job we were duly involved in, we went down to the site and we took approximately all of the heads of our departments. And we met Mr. Duley who was the sole representative of National Homes at that conference. We had about five people with us from our office.

Q And did you feel in that respect, did you have an opinion as to whether it was necessary to send five people?

A Well, he convinced --

MR. SIMMONS: Objection as to the form.

THE COURT: Yes, as to the form.

Q Did you have any discussions as to the Warminister pro-proposal conference with respect to what was necessary to send a number of people to the conference?

A Yes.

MR. SIMMONS: Objection.

THE COURT: Did you have any discussions on that object?

THE WITNESS: Yes, we did, sir.

BY MR. MORRISON:

Q What was the substance of those discussions?

A The discussion was it was not necessary at all to have that many down at the conference. If one person knew the general questions to ask, that would be sufficient because there are a number of other contractors all asking basically the same questions.

MR. MORRISON: I ask this be marked as Plaintiff's Exhibit 22 for Identification.

THE CLERK: A document dated January 4, 1972, to F. Wiedersun, Ann Wiedersun and Leon Swenson, marked for Identification as Plaintiff's Exhibit No. 2.

Q Mr. Laverty, I show you Plaintiff's Exhibit No. 22 for Identification and ask if you can identify this item.

A Yes, sir.

Q What is it?

A My memoranda, the reference to the pre-proposal conference on the project Warminster, Pennsylvania job.

Q And whose memorandum is it?

A My memorandum to Mr. Frederick Wiedersun, Mr. Norman Wiedersun and Mr. Leon Swenson.

Q Written after the pre-proposal conference?

A Yes.

MR. MORRISON: I offer this document in evidence as Plaintiff's Exhibit 22.

THE CLERK: Document marked for Identification as Plaintiff's Exhibit 22 now received in Evidence.

(So marked.)

Q Now, Mr. Laverty, I would ask that you read merely the first paragraph of this letter and next to the last paragraph of the letter.

A "The pre-proposal conference was held at the above site on December 21, 1971, at 1:30 p.m. and attended by the following: Al Voorneveld, Arthur Van Suetendael, Wayne Coons, Roy Scimeca, Berch Demirgian, Arvil Duley of National Homes and the writer."

The second to the last paragraph:

"It was determined by the Naval representatives that several addendums would have to be issued by the Northern Division Engineering Command, yielding more --

Q I think you are reading the wrong paragraph.

A I am sorry. "It should be noted that in the

future, only one or two people from our staff should attend these pre-proposal conferences. Questions about a particular job should be reviewed in our office before the meeting, and only the important questions and details given to our representatives for the conference."

Q Now, going back to the outset of this project, Mr. Laverty, when did your firm first decide that it wanted to proceed on the South Carolina Project?

A Mr. Gleason's letter dated the 29th which indicates the fact that National would be happy to submit a proposal with us.

MR. SIMMONS: Objection. That is not what the letter states.

THE COURT: You can ask other questions, counsel.

THE WITNESS: I don't quite --

Q Never mind the letter, that's when you decided, is that your answer?

A Yes.

Q Now, you testified on cross-examination that Wiedersum wouldn't actually start preparing the drawings until after the pre-proposal conference?

MR. SIMMONS: That is not the testimony on cross-examination.

MR. MORRISON: It certainly was.

MR. SIMMONS: It was when did his company make a decision.

MR. MORRISON: I wrote it down and it will show in the transcript exactly the question you asked and what he said.

BY MR. MORRISON:

Q Now, is it true that Wiedersum would not start work on the actual drawings until after the pro-proposal conference?

A That is true.

Q Why would you wait until then?

A Well, National went down or a representative of other people went down and the conclusion was that the project was not a good project. The conditions were bad, et cetera, et cetera. They would make the decision for us to withdraw and not proceed with the proposal before the work was done.

Q Now, regarding these plans that Mr. Simmons showed you, when was the first time that you saw Defendant's Exhibit A?

A At the deposition.

Q And this is the document that you saw?

A That particular one, yes.

Q Had you ever seen a reproduction of the drawings prior to that date?

MR. SIMMONS: Objection, leading.

THE COURT: Overruled.

THE WITNESS: Had I ever seen something like that before?

Q Yes.

A No, sir.

Q Did you review those drawings closely at the time they were shown to you by Mr. Simmons?

A At the deposition?

Q Yes.

A I just breezed through them.

MR. MORRISON: I have no further questions.

MR. SIMMONS: I have just one or two, your Honor.

May I see the receipts?

RECROSS EXAMINATION

BY MR. SIMMONS:

Q Mr. Laverty, I ask you to look at what has been marked as Plaintiff's 20 and read the date on the first item there on the first invoice.

A 2-29-1973, there is another three in there.

Q And this was delivered sometime on the 29th of

March, is that correct?

A It would be, sir.

Q I note all of your plans are dated the 30th.

A Yes, sir.

Q Does that date on the plan indicate the date on which you completed your drafting of that particular sheet?

A Normally, sir, yes.

Q It is normally the date --

A That is the completion date.

Q Excuse me?

A That was our completion date.

Q And all of the sheets that have been marked as, I believe it is Plaintiff's Exhibit 11, bear the date of March 30th, do they not?

A Yes, sir.

MR. SIMMONS: I have no further questions, your Honor.

MR. MORRISON: I have no further questions.

THE COURT: Is that all with this witness?

MR. MORRISON: Yes, that is all.

THE COURT: You may step down.

Members of the jury, this may be the right time to recess until 2 p.m. You may withdraw until that time, and do not discuss the case.

(A luncheon recess was taken to 2 p.m.)

AFTERNOON SESSION

THE COURT: Young lady, you may step to the front seat.

Counsel, you may proceed.

MR. MORRISON: I will call Mr. Voorneveld.

ALBERT VOORNEVELD, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your full name for the record, please?

THE WITNESS: Albert Voorneveld.

DIRECT EXAMINATION

BY MR. MORRISON:

Q Did you give us your full name?

A Albert Voorneveld.

Q Your home address?

A 229 Cold Spring Road, Syosset, New York.

Q Mr. Voorneveld, what is your occupation?

A I am an architect administrator.

Q By whom are you employed?

A Wiedersum, Frederick P. Wiedersum & Associates.

Q And how long have you been associated with them?

A 21 years.

Q What does your job involve?

A My job involves the handling of a project from its inception until its completion through all of the stages,

working, drawings, construction, and finally turning over the project to the owner.

Q Are you involved in the actual putting pencil on paper with respect to drawings? Are you involved in that?

A I am involved in a supervisory situation. I do not work on the drawing board.

Q But you are familiar with drawings?

A Yes.

Q You work with them every day?

A I work with them everyday.

Q What are you presently engaged in?

A I am presently in charge for our firm and for the County of Suffolk, Suffolk Community College, Eastern Campus, out near Riverhead. It is about a 35 million dollar project.

Q And what specifically are you doing?

A I am in charge of coordinating the entire project.

Q Were your duties similar back in 1973?

A Yes, sir.

Q Now, do you have any involvement in any of the projects with National Homes?

A Yes, I did.

Q When did you first become involved in any

dealing with National Homes?

A My first personal involvement I had was a trip to Lafayette, Indiana with several of our people to look at their plant facilities before we entered into a contract with the Government. Then New Jersey.

Q This would have been in 1971?

A Yes.

Q And do you recall what you did when asked by National?

A Yes, we looked at their manufacturing capabilities. Their operations. We met the organization and discussed our contract.

Q The contract had not been signed?

A The contract had not been signed. I thought it may have been signed at that time, I don't know. I know it was discussed and subsequently signed, whether at that time with revisions --

Q But the contract had been at least drafted by that time?

A The contract had been drafted. We discussed it and it had been composed, yes, sir.

Q How many projects were there that you actually worked together on that involved New Jersey?

A There was Rutgers University Project and Richard

Stockton Campus State University of New Jersey.

Q Now, were those projects underway at the time you got involved, or were they in their final stages, or what?

A When I became involved, those projects were being sought by the Dormitory authority of New Jersey and nothing, as far as our office or National Home had done anything. We hadn't started planning at all.

Q And were there any other New Jersey dormitory housing projects that were discussed but were not proceeded with

A Well, there was a package, as I remember, of about five projects, two of them were high-rise which, of course, National Homes was not equipped to become involved in and didn't want to become involved. I believe there was another 20 or 30 units of some smaller amounts, and we didn't want to be involved, and so stated.

Q With respect to the two that were not bid on, did Wiedersum prepare any drawings with respect to those?

A No.

Q Who all did you meet with when you were at National in 1971?

A I remember primarily Mr. Woolery.

Q What was his position?

A I believe he was Vice President in charge of the

contract in National Homes operation. But frankly, at that time -- I met a lot of people since, and I don't know if they were there then. I do remember Mr. Woolery there definitely. There were other people and maybe some of these gentlemen, I don't know.

Q When you say that there were discussions about the contract at that time?

A Yes, it was discussed in detail.

Q And were you a party to those discussions?

A Yes.

Q Now, you heard Mr. Simmons tell the jury that from National's standpoint there could never be an agreement between National and you to actually bid on a project until after your firm had submitted a final plan? You heard that?

A Yes, sir.

Q Now, at this meeting that you have just described, did anyone from National say that?

A No.

Q Did you ever hear anyone from National ever say that?

A Never.

Q Now, were you involved in the Warminster Project?

A Yes, sir.

Q Did Wiedersum prepare plans on that?

A Yes, we did.

Q Were you involved in that project?

A Yes.

Q Were you in charge of that project?

A Yes, sir.

Q Did you have dealings with National Homes regarding that project?

A Yes, sir.

Q Let me ask you, who did you deal with?

A Primarily John Gleason. And then during the bid period a fellow by the name of Sideler.

Q And during any of those discussions did anybody from National ever say that they were not making an agreement as to whether or not to submit a bid until after your firm had completed the final drawings?

A At no time, no, sir.

Q Now, were you involved in the South Carolina Project?

A Yes.

Q What was your role?

A I was in charge of it.

Q And when did you first become involved?

A I first became involved in that one when we received a letter from Mr. Gleason stating our interest and

it was very minor at that time. But when I really became involved is when we received the plans and the specifications, the performance specifications from the Navy, I became involved at that point because I immediately had to familiarize myself with the entire contents of that package.

Q That was after Mr. Gleason's letter of January 29th?

A Yes.

Q Had you seen Mr. Gleason's letter of January 29th at that time?

A I probably had.

Q Now, what specifically did you have to do with these plans and specifications that were sent by the Navy?

A Well, there were very extensive site surveys and utilities and borings in particular. It was a difficult site, as far as we were concerned. All of our information was available on the borings which you have problems under the ground showing what the soil conditions under the surface were. They were extensive and very complete. And we found all of the information we needed there, of course, the utility plans, the geographic surface, of course. And the borings, these borings were the most important of the package.

However, there was also the criteria as part of the

specifications by which we were to plan from the plans issued by the Navy performance specifications, dictated what was going to go into this package.

Q So that we understand what you looked at physically, you referred to borings and site information. What form did that information take?

A Boring logs, they are on large plans 30 by 40 inch plans.

Q Are they similar to the blue prints marked in evidence?

A Yes. They are borings prepared by an engineering firm and they are logs with the location of each boring on the site, and are very complete.

Q What would that boring information tell you?

A The boring information gives us the information we needed for the drainage. For the site improvement. Site development. Your utility designs. Also, of course, it gave us the information we needed for constructual purposes, foundations and so forth.

Q Now, you also mentioned performance specifications and criteria. What form did that take?

A The performance specifications and criteria were in the form of written specifications 8-1/2 by 11, mimeographed.

Q And were those large or small?

A 8-1/2 by 11, about that thick in total (indicating).

Q And you began reviewing this as it came in?

A Yes.

Q Do you recall there was a pre-proposal conference on this project?

A Yes.

Q Did your firm attend?

A No, sir, we didn't.

Q Who made the decision not to attend?

A I don't know who made the decision, but it was my opinion, and I probably voiced it by saying I didn't think we should waste our time and efforts in sending a man down --

MR. SIMMONS: Objection. I don't think it is responsive.

Q And what was that opinion based on?

A The opinion was based on, we are not contractors, we are architects and we are able to design a able, and we weren't worried about the logistics of getting material to the site and so forth, which I contractor would have to do. We were interested in what existed at the site, underground, on top of that ground. We had all of the information from the Navy and I didn't feel it was worthwhile for us to

send men, to send someone down there to look at that site, which wouldn't do any good.

Q Had you been to the property on a pre-proposal conference?

A Yes.

Q Which one?

A Warminster.

Q Did you personally attend that?

A Yes, sir.

Q Do you have an opinion as to whether or not the Warminster pre-proposal conference was worthwhile?

A I thought it was a waste of time on our part.

Q Now, did there come a time when you met with anyone from National after the pre-proposal conference?

A Yes.

Q When was that?

A The 20th we met, according to -- I believe it is the 20th memo, or rather a report which was written by Abrahamson, and then after the 20th we met again with Mr.Gleason.

THE COURT: That was 1971?

THE WITNESS: No, sir, that would be '73.

THE COURT: O.K.

Q Let me refresh your recollection as to the date,

Mr. Voorneveld. I show you a document which has been admitted as Plaintiff's Exhibit 8 which purports to be a memorandum from Mr. Floyd Payne and Mr. John Gleason regarding the pre-proposal conference which he says was held on February 20, 1973. Does that refresh your recollection as to the date of the pre-proposal conference?

A Right. February the 20th, that was the proposal conference, I am sorry, I got my date mixed up.

Q Do you recall if you had met with anyone from National prior to the pre-proposal conference?

A May I ask a question?

Q No, you can't, really.

THE COURT: Yes, you may.

THE WITNESS: There was another memorandum of a meeting either directly after this one, or one just before it; one of the exhibits.

BY MR. MORRISON:

Q Surely, would that be it? I show you Plaintiff's Exhibit 10 which refers to a meeting at your office --

MR. SIMMONS: What exhibit is that?

MR. MORRISON: Exhibit 10.

THE WITNESS: Then, no, there was no meeting prior to the pre-proposal conference.

Q O.K. Now, did there come a time after the

pre-proposal conference when you met with anyone from National Homes?

A Yes, although my name is not on this particular meeting written by Mr. Abrahamsen, but if I may, I can tell you particularly that I was there on and off throughout that meeting.

Q This was March --

A That was March the 12th.

Q I believe the memo is dated March the 12th, but the meeting was March the 6th?

A And I was there. I had another client in my office, Masten Beach, as a matter of fact, I looked this up in my diary, and I was in and out of this meeting throughout the entire meeting.

Q O.K. Now, in between the pre-proposal conference and February the 20th, is this the conference on March the 6th, which you testified you were in and out, did you have occasion to meet with anyone from National Homes in between those two days?

A No, sir.

Q Did you have occasion to check your diary, or calendar recently, Mr. Voorneveld?

A Yes.

Q Regarding meetings with National Homes?

A Yes. I met with them on February 26th, Mr. Gleason.

Q You did meet with them in between those two dates?

A Yes -- No, this is February the 20th, and this is March the 20th -- yes, I am sorry, you're right, February 26 I met with Mr. Gleason.

Q Is that before the March 6th meeting?

A Before the March 6th meeting, right.

Q Let's take them one at a time.

On February 20th you were at the pre-proposal conference?

A No, sir.

Q Then you had a meeting on March 26th?

A Right.

Q Would you tell us where that meeting was and who was there?

A Our Valley Stream office, particularly Mr. Gleason.

Q And how did that meeting go, do you recall?

A The meeting was to discuss our future plans if we were going to go after additional work and to set up some ground rules on how we could make ourselves more competitive both by National Homes efforts and our efforts.

Q Did you discuss, was there any discussion

regarding the pre-proposal conference at that meeting?

A Not in particular that I can remember.

Q Was there any discussion regarding the plans and specs which you said you had been reviewing by that time?

A Yes, we discussed them. We discussed minimizing details. We discussed meeting with their people and using whatever knowledge they had accumulated over the years. They had done evidently quite a few of these things and incorporating them all along with our knowledge of how to put these things together so that we could make ourselves more competitive in particularly the South Carolina project.

Q And that was all on February 26th?

A Yes.

Q Did you discuss at that meeting your chances of success on this project?

A Yes. We discussed the fact that we came in close and we had a good rating according to the criteria and evaluation the last time around. And that we thought, when I say we, everybody at the meeting thought we probably had a good chance of getting the next one. We at least became competitive.

Q Did you discuss at this meeting whether or not you should, in fact, prepare and submit a bid on this project?

A We decided to do it. We decided a[illegible] by "we," I say people at the meeting, National people and ourselves, that we would definitely go after the South Carolina Project.

Q Now, did Mr. Gleason say at that meeting that you could go ahead on the project, but that they would make a decision after you had submitted plans?

A No, sir.

Q Was anything else said at that meeting that you can recall?

A Yes, we all ended up on a very happy note. And Mr. Gleason said: "Let's go and get this." And we concurred and everybody did the best they could to go and get it.

Q This was at the end of the meeting?

A Yes.

Q Now, subsequent to this meeting did there come a time when Wiedersum began to work on the drawings for this project?

A We were working at that time.

Q And did you continue to work?

A We continued right through then.

Q How many people did you have working on this project?

A Probably somewhere between 10 and 12 people.

Q And they all worked under you?

A Yes.

Q Did you have much contact with National in between this meeting and April 6th?

A By telephone? I guess I did have a letter of contact.

Q And who would you primarily be in contact with?

A I would primarily be in contact with John Gleason.

Q And what type of things did you discuss?

A One time we discussed the extension of time we were looking for. Another time we discussed materials for which we had a choice because you must realize National Home had a good portion of their own materials that they were using and we were designing around that. We naturally had need for information regarding their materials. We had as far as components are concerned, props, et cetera, et cetera, but they had pre-disposed ideas and how that which made them most competitive manufacturers and so forth, we, of course, were architects, had to agree that it does meet the specifications posed by the Navy, and from time to time that which was within the FHA specifications that were requested. And, of course, they know what they can use and what we couldn't use. But we did have a lot of discussions

regarding materials and their product and what have you.

Q Now, you started to testify a minute ago about a meeting of March the 6th which is referred to in Plaintiff's Exhibit 10. And I ask you to refer to that meeting. What was the purpose of this meeting?

A The purpose of this meeting was to make ourselves more competitive. Sometime along the line I believe it was suggested in the report of the pre-proposed meeting that we do get together and that we use where we could some of the experience on site in particularly gained by National over the years. And this meeting was primarily on the site and site elasticity distribution. And we went into it in detail.

Q Now, that memorandum refers to the fact that Mr. Payne reviewed and approved your site plans in the first paragraph? What are site plans?

A Site plans show the topography, the regrading of the soil to meet the drainage that you're going to put on the site. And the site plans include utilities, electricity, water, gas and sewage. Site plans include drainage, roadway, sidewalks, curbs and the locations of the buildings.

Q Are site plans something separate from the final plans?

A They are part, they are the plans that dictate

the elevation of the land where utilities will be run. Where the road will be. Where the drainage will find itself. And they are part of the working drawings you use in building construction projects.

Q And did you have these site plans there at the meeting?

A We had the site plans pretty much developed on March 6th.

Q Did there come a time when your work on the final drawings were completed?

A Yes.

Q And when was that, do you recall?

A Final drawings -- well, by final, you mean the first submission to National, and the final --

Q You tell us what was completed first.

A By March 30th the initial plans that were shipped to National Homes were completed.

THE COURT: That is 1973, also?

(Continued on next page.)

THE WITNESS: Yes, sir. And they were completed. And as I state, you don't suddenly on March the 7th come up with every plan complete. They had been completing sheets of that plan probably over a week's period of time. We used the date of March 30th on those plans because we always on contract documents have one date for each and every sheet, which makes it easier from a contractual standpoint; so we always have a single date on it unless we have to make revisions later on. But that March 30th date was set as the date on which National requested that we provide them with plans. March 30th is the date of that.

DIRECT EXAMINATION CONTINUED

BY MR. MORRISON:

Q I show you Plaintiff's Exhibit 13 I believe it is --

MR. SIMMONS: I think it is the 11th.

Q Exhibit 11, the drawings which Mr. Laverty testified to that he sent on March the 13th, and ask you if those are the drawings you have been referring to?

A Yes, sir.

Q And those drawings were completed you say on the 30th?

A Yes.

Q Although some may have been completed earlier?

A Some may have been completed on the 20th.

Q But they would still have the date of the 30th?

A They would still have the date of the 30th, yes, sir.

Q Is that a customary practice?

A Yes.

Q On all projects?

A Yes, sir.

Q Now, do you recall if there were any changes made to the March 30th drawings or subsequent to this time?

A Yes, very minor. One change we had, we had some clothes line. And another change, we had to change a detail with footing of a slab. And another change was some lettering. Another change was additional couple of play yards. Very minor changes, but there were changes.

Q I show you Plaintiff's Exhibit 16 and ask you if these are revision drawings that were subsequent to March 30th?

A Yes, sir, they are.

Q Were you aware that National was using or would be using the March 30th drawings in order to solicit prices from the subcontractors?

A Yes, sir.

Q Would any of these changes in the April 4th drawings have had any effect on the pricing?

A No, sir.

Q Did there come a time when you computed the fee that you would charge if National were a successful bidder on the South Carolina Project?

A The fee was computed by Mr. Wiedersum.

Q Did you have any discussion with him regarding that?

A He consulted our estimater primarily to come up with estimates that he thought the project would cost. And I imagine he used the percentage we normally would use to come up with the fee.

Q Did he communicate the amount of the fee to you?

A Yes.

Q And did you have any contact with National regarding the fee?

A Yes, I called Mr. Gleason and told him that they were putting the package together and part of our agreement was that they needed our fee so they could include it in the package. And that our fee would be $250,000.

Q You did this by telephone?

A Yes, sir. And I sent a letter the following day I think or maybe the same day confirming it.

Q Do you recall when this was?

A April 2nd or 3rd.

Q Now, when you discussed this matter with Mr. Gleason did he say anything in response to the figure you gave him?

A No.

Q Did he complain about it?

A No.

Q Did he say it was too high?

A No, he didn't. He said he would add it in.

MR. MORRISON: Could I have this marked, please, as Plaintiff's Exhibit 23 for Identification?

THE CLERK: One-page letter dated April 3, 1973, from Frederic P. Wiedersum Associates to John Gleason, marked for Identification as Plaintiff's Exhibit 23.

(So marked.)

BY MR. MORRISON:

Q I show you Plaintiff's Exhibit 23 for Identification and ask you if that is the letter you just testified to?

A Yes, sir.

Q And you sent that to Mr. Gleason?

A Yes, sir.

MR. MORRISON: I would ask that this letter be admitted into evidence.

MR. SIMMONS: No objection.

THE COURT: It will be marked.

THE CLERK: Document marked for Identification as Plaintiff's Exhibit 23 now received in Evidence.

BY MR. MORRISON:

Q You say you spoke with Mr. Gleason the day before you sent this letter?

A That is correct, yes, sir.

Q And it would have been April 2nd?

A Yes.

Q Did Mr. Gleason during that conversation question you whereabouts was the final drawings?

A No, sir, he was working on the final price.

Q Did he say that?

A Yes, sir.

Q Did you have any further discussions regarding preparation of the bill?

A No, sir.

Q Did Mr. Gleason say during that conversation that they had not yet decided whether or not to submit a bid?

A No, sir.

Q I will ask you to read this letter to the jury, please.

A "Mr. John Gleason, Vice President, National Home Construction Corp. Regarding Charleston, South Carolina, Department of Navy, 200 family housing unit - FPWA #7318

"Dear Mr. Gleason: Confirming our telephone conversation of yesterday's date, our fee for the above project, if you are the successful bidder, will be $250,000, which includes the preparation of all drawings and specifications required and necessary visits to the project during construction.

"Lots of luck on this one.

"Very truly yours ---"

THE COURT: Which job was this?

MR. MORRISON: This is South Carolina.

THE COURT: South Carolina.

BY MR. MORRISON:

Q In this letter you state, Mr. Voorneveld, that the fee included in the preparation of the drawings and specifications and necessary visits to the project during construction --

A Yes.

Q Did you anticipate that if National were the winning bidder there would be further work to do?

A Yes.

Q Did you have any estimation of what would be involved?

A I didn't know. I never thought of that, but I am sure there would have been a portion of that fee that would have been for visits to the site, and probably preparation of some supplementary drawings. Part of that fee would have included that.

Q But you would have been required to make some visits to the site?

A Yes.

Q Now, going back for a moment to this telephone conversation where Mr. Gleason on April 2nd when you communicated the amount of the fee, did Mr. Gleason say during that telephone conversation that they were having trouble getting prices from the sub-contractor?

A No, sir.

Q Did he say National might not have time to complete this?

A No.

Q When was the first time that you heard that a bid had not been submitted?

A I couldn't put a date on it, but it was whenever it came into the office I heard of it shortly thereafter Bill

Laverty inquired. I am sure he told me. I was one of the first people to know. What date, I couldn't testify to that.

Q Now, did you have any occasion to set a fee on the Warminster Project in the event that you had been successful?

A I believe so.

Q Do you recall what the amount of that fee was?

A No, sir, I don't.

MR. MORRISON: May I have this marked as Plaintiff's Exhibit 24.

THE CLERK: A one-page letter dated February 24, 1972, from Frederick P. Wiedersum Associates to National Home Construction Corporation, marked for Identification as Plaintiff's Exhibit 24.

THE COURT: What was the date of that?

THE CLERK: February 24, 1972.

DIRECT EXAMINATION CONTINUED

BY MR. MORRISON:

Q Mr. Voorneveld, I show you a document and ask you if you can identify it.

A Yes. It is a letter I wrote back in February 24, 1972, to Mr. Gleason regarding the Naval complex of Warminster, Willow Grove, Pennsylvania. Do you want me to read it?

Q Is that your signature at the bottom?

A That is my signature at the bottom.

MR. MORRISON: I offer this document in evidence as Plaintiff's Exhibit 24.

MR. SIMMONS: For what purpose are you offering it, Mr. Morrison?

MR. MORRISON: With regard to damages. It is our contention that the item raises customary value of services and fee; that is, a fee upon some respect, there is going to be some evidence of that.

THE COURT: Very well, mark it.

THE CLERK: Plaintiff's Exhibit 24 marked for Identification is now received in Evidence.

BY MR. MORRISON:

Q Would you read that letter to the jury, please?

A "Dear Mr. Gleason:

"As we discussed on the telephone, if you are the successful bidder, our fee for the above project will be 5 percent of the construction cost which you have applied to your bid.

"Sincerely --" and my signature.

Q Did anyone from National object to this amount of the fee on the Warminster Project?

A No, sir.

MR. MORRISON: I have no further questions.

CROSS EXAMINATION

BY MR. SIMMONS:

Q Mr. Voorneveld, did the fee that you referred to in your letter of February 24, 1972, Exhibit 24, did that also contemplate some work that would have to be performed after the award of the contract?

A Yes, sir.

Q Now, you mentioned a conversation with Mr. Gleason, I think dated the 2nd of April. What time of day would that have been?

A I couldn't tell you specifically as to the time. I don't know.

Q Well, how long did the conversation last?

A Five minutes.

Q And who initiated the conversation?

A I did.

Q For what purpose? Why did you call him?

A To establish our fee so that they could include it in their bid.

Q Was there any other reason for calling Mr. Gleason?

A To see how things were going in general.

Q What did you say?

A I just asked how are things going in general. That is the substance of what I said.

Q What does in general mean to you?

A If we were going to be successful in the South Carolina project. I was concerned about the South Carolina Project as to the compilation of the final bid and whether or not, in his opinion, we were going to have a chance at this one.

Q Well, did you ask him that?

A Yes.

Q What did he say?

A He was very optimistic.

Q What did he say to you?

A I don't know.

Q Well, you said he was very optimistic. What did he say?

A Well, there are many ways a person can be optimistic. I don't know verbatim what he said.

Q You don't recall?

A I don't recall, right.

Q You were in charge of the Warminster Project, were you not, sir?

A Yes, sir.

Q And do you recall how long prior to the submission date for that project that final plans were sent to National?

A Very similar to the South Carolina Project.

THE COURT: This is the New Jersey matter?

MR. SIMMONS: No, your Honor, this is the Warminster Project.

Q You say very similar to the South Carolina Project? What do you mean?

A Elapsed time.

Q Excuse me?

A Elapsed time.

MR. SIMMONS: Can I have this marked as Defendant's Exhibit B for Identification.

THE CLERK: A letter dated January 14, 1972, to Mr. John Gleason from Albert H. Voorneveld marked for Identification as Defendant's Exhibit B.

MR. SIMMONS: Might I have this marked as Defendant's Exhibit C?

THE CLERK: A letter dated February 8, 1972, addressed to National Homes Construction Corporation from Albert H. Voorneveld, marked for Identification as Defendant's Exhibit C.

(So marked.)

Q Now, Mr. Voorneveld, I show you first Exhibit C, and ask you to look at that letter and ask you whether it refreshes your recollection as to the submission date for

the Warminster Project?

A Well, I am reading -- I, of course, wrote --

Q Is that a letter you wrote?

A Well, I don't see my signature on it, but it must have been transmitting to Mr. Gleason --

Q Was that a letter you wrote?

A I can't be sure, my signature is not on it.

MR. MORRISON: I will stipulate that this letter was sent to the defendants.

MR. SIMMONS: All right. I will ask that this be marked as Defendant's C in Evidence.

THE CLERK: Document marked for Identification as Defendant's Exhibit C now received in Evidence.

(So marked.)

BY MR. SIMMONS:

Q I ask you to look at Defendant's Exhibit B for Identification, is that a letter sent by you?

A I would presume it is.

MR. SIMMONS: I would ask that this be admitted into evidence as Defendant's Exhibit B.

THE CLERK: Defendant's Exhibit B marked for Identification now received in Evidence.

(So marked.)

Q According to your letter of February, Exhibit C,

the submission date for the Warminster Project was February 18, '72, was it not? I ask you to look again at your letter of the 14th of January, 1972, Exhibit B, were those final plans that you sent to National you referred to in that letter?

A Yes, I would think they were.

Q Would you read the letter, please?

A "Enclosed herewith please find two copies each of the following drawings.

"Floor plan drawing, No. 1.

"Site lay-out plan drawings, No. 1-B and 1-C.

"Planting plan cross-sections, typical wall foundations, floor.

"And roof section details.

"Kitchen plan and elevation.

"Remaining drawings and specifications for site utility, drainage, et cetera, and all mechanical and electrical drawings will be completed by the time you arrive on Wednesday, January 19, 1972, so that by that time we can go over the entire project and modify as best suits your needs for pricing purposes."

Q So you had what was a final set of plans completed over a month before the submission date, is that not right?

A What was the submission date, I don't have it?

Q February 18, '72, according to your letter --

A According to the letter?

Q According to your letter of February 8th. Now --

MR. MORRISON: Objection, the 8th to the 18th would not be a month. You said over a month.

MR. SIMMONS: I asked what was the submission date for the Warminster Project. He referred to the submission date as being February 18, '72 in Defendant's Exhibit C.

MR. MORRISON: I understand.

MR. SIMMONS: With Defendant's Exhibit B he just testified that he sent out a set of final plans to National for pricing. That would be over a month, prior to February 18th, or January 14th, to February 18th.

BY MR. SIMMONS:

Q Now, what is it that you sent with Defendant's Exhibit C in Evidence? Why don't you read the letter? Read it aloud for the record.

A "We are enclosing herewith, eight sets of final drawings, including title sheets and drawings Nos. 1 to 15 for the above project. You will note six sets are for your submission on February 18th, and the other two sets are for

your use and information.

"If you have any comments,please notify us at your earliest possible convenience so that we may take whatever action is necessary on our part.

"We sincerely hope this project is a successful venture."

Q So the timing was a little different on the Warminster Project? You submitted a set of final plans for National to price, to work with, on January 14th, when the submission date was February 18th?

MR. MORRISON: I object to that. And why I object is that he is mischaracterizing the letter, that is, the letter of January 4th refers to some specific things that were sent. But the letter just doesn't refer to final plans.

THE WITNESS: If I had this all together, I would have known the difference before I testified that it was the final plans.

Q The plans that you referred to in your letter of February 8th, those were the submission plans, were they not?

A Those plans were similar. If you want a correlation between this project and the Warminster -- North Carolina Project, these plans were similar to the ones

we discussed in our office when Abrahamsen wrote his report that they were in the final state. Those two dates I think you will find timewise just about the same.

Q What I am asking s were the plans that you submitted, the eight sets of plans submitted in your letter, on February 8th?

A Those were the final submission plans.

Q Those were the plans that were to be delivered to the Navy as part of the submission?

A Yes, that is, 10 days before the submission.

Q Ten days before the submission. The plans that you referred to in your letter of January 14th, were they not substantially complete final plans for the pricing purposes?

A I don't -- You're asking for an opinion, but I can't give the answer you want.

Q You don't recall?

A My opinion is that they would not be.

Q Mr. Laverty testified that the decision had not been made in your office to proceed with the drafting of any plans until after the 20th, is that not correct? The 20th being the 20th of February, the date of the pre-proposal conference? Is that not correct?

MR. MORRISON: I object to the question because

it slightly misstates Mr. Laverty's testimony. I believe he did testify that they did not start the drawings until after the pre-proposal conference.

MR. SIMMONS: I do not believe he said that. I believe he testified that they didn't proceed to go ahead with the project until after that date.

Q Mr. Voorneveld, had your office made a decision that they would definitely proceed to drafting the plans prior to the pre-proposal conference?

A I don't remember.

Q Now, referring to your meeting on February 26th with Mr. Gleason, did you at any point say to Mr. Gleason, "You know, we are not going to start to work on the project unless you give us a commitment to put in a proposal"?

A No, sir.

Q Who were the other people at your office that were present at the meeting?

A I don't remember.

Q Did you hear anyone from your office make a statement like that in substance to Mr. Gleason, or anyone else?

A No, I don't remember.

Q Did you at any point in time ask for that, ask for a commitment from National at any other time?

A I thought we had it.

Q Did you hear my question, Mr. Voorneveld? Did you ask for that sort of commitment from anyone at National at any time?

A No, sir.

Q At any time did you hear anyone else from your company ask National for that sort of commitment?

A No, sir.

Q Now, I believe you testified just a moment ago that you had that sort of commitment from National, is that not right?

A Yes.

Q O.K. If Mr. Gleason didn't tell you that you had that sort of commitment at the meeting on February 26th, who did tell you that you had that sort of commitment?

A Mr. Gleason in the letter before February 26th.

Q You are referring to Mr. Gleason's letter of January 29th?

A I believe that is it. I will have to see it to be sure of that.

Q Is that the letter you are referring to, Plaintiff's Exhibit 5?

A Yes.

Q The letter speaks for itself. But other than

this letter, can you refer to any other conversations or any other documents in which that sort of commitment was made by National to your company?

A No, sir.

Q This is the only letter, you can't think of anything else?

A Well, I can think of a lot of other things. In fact, we were working and they knew --

Q Let's not talk about other things.

A Well, you asked about other things.

Q I apologize for asking about other things. But can you think of any conversations or any letters or agreements with your company?

A In my opinion --

Q Not your opinion.

A All right, yes, I can.

Q I want you to tell me specific conversations.

A Yes.

Q What conversation is that?

A A conversation when I discussed it with Mr.Gleason --

Q When was that conversation?

MR. MORRISON: Let him finish, please.

THE WITNESS: Any time I discussed with

Mr. Gleason or anyone else at National Home the construction of this project and the work we were doing with them to me was a commitment.

MR. SIMMONS: Your Honor, this is argument, and I want a specific conversation. I have asked for a specific conversation or specific document. And he has not answered my question. His answer is not responsive.

THE COURT: Well, can you answer?

THE WITNESS: I can't, no, sir.

THE COURT: All right.

BY MR. SIMMONS:

Q No?

A No answer.

Q Well, no answer, does that mean, Mr. Voorneveld, you can't refer me to any specific conversations?

A Yes.

MR. MORRISON: So that the record is clear, is your question a specific conversation between someone at National Homes specifically said we do not expect you to go ahead unless we commit ourselves to bidding, is that the question?

MR. SIMMONS: I think the witness understood my question and he answered it.

MR. MORRISON: Your question was framed about five minutes ago and I just wanted to make sure that was the question.

THE COURT: Suppose you re-ask your question.

MR. SIMMONS: O.K.

Q O.K., other than this letter of January 20th, Mr. Voorneveld, can you refer to any conversations in which someone from National Homes represented that if you started work on preliminary plans, if you worked on the project, a proposal would be submitted?

A My answer to that again is, yes. Yes, many conversations.

Q What specific conversation?

A You asked me any --

Q What specific conversation?

A No, specific conversation.

Q You can't refer to a specific conversation?

A Not a specific conversation.

Q Now, Mr. Voorneveld, what was the process of pricing projects? What did that mean to you? Did you refer to that in your testimony, did you not?

A Yes.

Q What does that mean to you?

A Our pricing of a project.

Q You referred to the concept of pricing a project, I believe you said Mr. Gleason was in the process, or National was in the process of pricing?

A That means they pick their plans where they meet with sub-contractors and solicit prices from them, and from material suppliers and put it all in a package to include, in this case, our fee.

Q Now, were these suppliers from whom National would get bids the sub-contractors, would they buy material from men or merchants in the South Carolina area?

A I would assume they would be in the South Carolina area, of course. I would presume that wherever the project was going to be constructed, but they may have come up from other parts of the country. But they would solicit their prices in the area that they were going to build, I presume.

Q It is also possible, isn't it, that you are not going to be able to get a bid from specific contractors for a specific type of material that you need for the project, that is always a possibility?

A In my experience I have never met a contractor to be in that position.

Q You have never known a contractor to be in a position where he couldn't get a commitment from the sub-contractors

in time to put in a proposal?

A In my experience, no, sir.

Q But it is possible, isn't it, sir?

MR. MORRISON: I object to that. Anything is possible.

THE COURT: It is not evidence as to what is possible.

Q Now, Mr. Laverty testified that a number of changes were made in the plans that were submitted on -- well, the plans that are dated, I believe they have the date of March the 30th and those that have sheets with the various other revision dates? Could I show you those?

A Yes.

Q I show you now Exhibit 16 that has been testified to to be the plans that were sent with Mr. Laverty's letter of the 4th. I also show you Exhibit 11, the plans dated March 30th.

A Yes.

Q Can you look and pick out the sheets on which revisions were made on Exhibit No.16?

A Yes, sir.

Q Would you do that?

A Yes, sir.

Well, on sheet SK-05, SK-06, SK-07, SK-08, SK-16,

SK-17, 19 and 20.

Q All right, what are the nature of the changes on the first sheet that you referred to?

A SK-7 --

Q I think you mentioned 5.

A 5, SK-05, there are one, two, three, four, five, six, seven little boxes on the sheet and they look to be about six inches by six inches that were added to these little down spouts, sir; that is all.

Q What are the little boxes?

A Down spouts.

Q What do you mean down spouts?

A Down spouts, to lead the water off the roof.

Q Pipes leading the water off the roof, that is all?

A That is all.

Q What is the next sheet?

A 7 to 6, I believe, I would have to look at the other drawings. This is very minor, possibly the shading on the building or something.

Q Well, look at the other drawings.

A All right.

Q Why don't we put them on --

MR. MORRISON: Why don't you put them on the

table.

Q Would it be easier if we were to put them on the table?

A Yes.

Q All right, do so.

THE WITNESS: Whatever changes were made, it would have been -- Oh, here are the changes. It is not even in the print.

Q You don't see the change?

A No change that I can see. There may be some minor thing, but it was very minor.

Q What about the next one?

A SK07? The detail here showing the foundation insulation was removed to a different detail. A very minor thing. The insulation was moved to expand the joint where the foundation meets the wall of the slab, underground.

Q All right. Is that the only change?

A That is the only change on that page.

SK-08, we added three clotheslines up here.

Q Are those the only changes?

A Those are the only changes.

Q All right, next.

A SK-10, change of lettering or something of that sort. Very minor change.

Q Is that change on the plan?

A No, the copy of the work done, there may be a few lettering changes or something like that.

SK-17, again, it is reflected in the drawing that it was just a note.

Q Nothing having to do with the scope of the work?

A No.

Q Lettering?

A Lettering.

Q What about 19? Here is 19.

A Well, the words, "concrete" was added to the car port."

(Continued on next page.)

Q What does that mean?

A The driveway -- well, the carport. It says "concrete" and this is a driveway. We have a concrete driveway, here a carport, concrete carport.

Q Where it changes?

A Where it changes. And SK-20 I don't see in it.

Q Well, is there a change there?

A It must be somewhere.

Q Has the plan itself been changed?

A No, sir.

Q Now, Mr. Voorneveld, you didn't have anything to do with sending those plans out with either set?

A No.

Q That was Mr. Laverty?

A No, sir, I did.

MR. SIMMONS: May I have a moment, your Honor?

THE COURT: We will take a ten minute recess at this point.

(Thereupon Court recessed for 10 minutes.)

CROSS-EXAMINATION

BY MR. SIMMONS (Continued):

Q Now, Mr. Voorneveld, what was Mr. Laverty's function in connection with the South Carolina project?

A Mr. Laverty brought the project into the office,

I guess, and he, as you know, wrote several letters and helped me in many ways.

Q You had the ultimate responsibility?

A Yes.

Q But the day-to-day work was done by Mr. Laverty, contact, follow-up on matters?

A With National Home, yes.

Q So Mr. Laverty sort of kept the thing moving, making sure the people would get the proper information? And making sure that things were the way they were supposed to be raising problems with you?

A Yes.

Q Now, on the previous project of National as a Warminster project, did Mr. Laverty work with you on that?

A Yes.

Q His function was somewhat different at that time, was it not?

A I don't believe he was involved at that time as he was here.

Q You did more than Mr. Laverty did for Warminster? You did more on the Warminster project, and Mr. Laverty did more on the South Carolina project?

A I guess you might say that.

MR. SIMMONS: I have no further questions of

this witness.

REDIRECT EXAMINATION

BY MR. MORRISON:

Q Mr. Voorneveld, just to clarify one point, I show you Defendant's Exhibit B which is your letter of January 14, 1972?

A Yes.

Q Whereby you forwarded some drawings to National?

A Yes. it is on the Warminster project.

Q It is on the Warminster project. Were the drawings which were forwarded on that date the final drawings?

A No.

Q What type of drawings were they?

A Similar drawings we had available on March 6 for the North Carolina project.

Q You mean the South Carolina project?

A The South Carolina project, sort of advance preliminaries.

MR. MORRISON: No further questions.

MR. SIMMONS: One other question.

RECROSS EXAMINATION

BY MR. SIMMONS:

Q Mr. Voorneveld, the changes that we talked about

that were made between March 30th plans, and those that bore certain revision dates later, what were the reasons for the changes?

A Well, in architectural or engineering drawings when you make any changes to drawings whatsoever, no matter how insignificant, that is a revision and it is so marked on the tracing.

Q Where were those revisions made?

A They were changes that hadn't been done the first time, or changes of the insulation around the foundation. I believe that was at the suggestion of National Homes people. They thought it was unnecessary and we got rid of the insulation and put a simple construction joint down which was a saving in money.

Q Who conveyed those changes on to you?

A Our draftsman.

Q Now, you thought some changes were suggested by National --

MR. MORRISON: Excuse me, your Honor, but this is certainly not within the scope of redirect. I thought he had finished his cross-examination. I asked one question on redirect --

THE COURT: Yes. I think we have been over most of it. You are very limited on recross.

MR. SIMMONS: Okay, your Honor.

Thank you.

THE COURT: You may be excused.

MR. MORRISON: I call Mr. Norman Wiedersum to the stand.

N O R M A N W I E D E R S U M , being sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: Would you state your full name and home address?

THE WITNESS: Norman John Wiedersum, 142 Wood Hollow Road, East Hills, Long Island.

DIRECT EXAMINATION

BY MR. MORRISON:

Q Mr. Wiedersum, what is your occupation?

A Registered architect.

Q Where are you employed?

A Frederick P. Wiedersum Associates.

Q What is your educational background?

A I attended, of course, high school. After that, Syracuse University, then three years in the service, and back at Syracuse University and a Bachelor of Architecture in 1948.

Q Are you a member, or have you been with the

* * *

* * *

#3 Wiedersum -direct

(Jury present.)

F R E D L R I C P. W I E D E R S U M ,

having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

MR. MORRISON: Recalling Mr. Frederick Wiedersum.

THE CLERK: You have been previously sworn. Resume the stand, please.

DIRECT EXAMINATION

BY MR. MORRISON: (Cont.)

Q Mr. Wiedersum, did you have an occasion to determine the amount that your fee would be in the event that National was a successful bidder on the South Carolina project?

A Yes, sir.

Q And what was the amount of that fee?

A The amount of the fee given verbally and in writing was $250,000.

Q Who determined that fee?

A I did.

Q And on what basis did you determine it?

A The procedure for establishing an architect's fee is two ways, basically; to be on a fixed fee or it can be on a percentage fee.

Usually, a fixed fee, though, is based on a percentage of the total cost of construction. So we knew that the -- the particular building program was estimated by the Government as three million nine something. We also know that the Government and other Federal agencies or governmental agencies have a habit of publishing lower figures than funds they have available so that they can get a very good bid.

So I gave the plans, and it was done through our estimating department. We have one on our staff. And they came up with an estimate of approximately four million two, and I took six percent of that and that's 240 so I said, "Round it off, $250,000."

Q To your knowledge, would the three point nine price that the Government had originally set, would that be binding on a project of this nature?

A Oh, no. It's a published figure.

Q And do the final prices frequently exceed the original published price?

A Most generally.

Q You recall seeing a letter that Mr. Voorneveld sent to Mr. Gleason about the amount of this fee?

A Yes, sir.

Q You recall that in that letter Mr. Voorneveld

refers to the fact that the fee would cover the work that you had done to that point on the drawings, plus some future supervisory work on the site of the project if you were successful?

A Yes.

Q Were you aware of that at the time you determined the fee?

A Yes, I was. In fact, in setting the fee=- the fee for the previous project, the Warminister was set at five percent. On that particular project we expected to have to do very little, by way of drawings, additional drawings, visitation to the site and so forth.

Q Very little if you had been successful?

A If we had been successful. On this particular project, we knew we had additional work to do on the plans and we also knew that we had, we felt, numerable visitions to the site, which would have meant engineers, architects that would have to go down, transporation costs and that.

I did add in that extra fee from five percent to six percent.

Q So that if you were computing the amount of your fee just for the work that was actually done as of the time the final drawings had been completed, how much

would that be?

A Well, you would deduct the one percent off $42,000.

Q That is one percent of the expected price of 4.2 million?

A Yes, sir.

Q And that would be $42,000?

A Yes, sir.

Q Now, at the time in question, namely, April of 1973, was there any sort of general prevailing fee in the industry on projects of this nature?

A Well, there always has been a recognized minimum fee schedule set for the profession, and as long as I have been in the business, since 1950, it's been used, and I know my dad before that used as a guide, and it works this way, it's like a sliding scale basis of fee.

The more complex the building, the more fee. The larger the building, generally, the less fee. Fees are regulated also on duplication of units, like housing and so forth, the fee comes down.

Q This schedule isn't binding on any architect, is it?

A No, it isn't, but it's generally used through-

out the whole industry and throughout the country. Every area has a different one. It might differ very slightly, but it's just about the same.

Q And approximately what would be the fee that the industry would recognize?

A The fee for this size project that we worked off of was 5.5 percent.

Q Does your firm keep time cards showing the amount of time spent by your employees?

A Generally, yes.

Q What is the purpose of keeping time cards?

A Time cards are very important to the operation of an office. It's very important, really, when you look at them and analyze them as to the quality of the people you have in your employ, whether they are performing properly, whether they are spending too much time on a project, whether they are arriving at solutions.

You know, whether it is done in a reasonable time, whether they are loafing. There are a lot of reasons for using it.

Q Your people don't loaf, do they?

A No, not at all.

Q Do you ever bill a job on the basis of the time cards?

A Only where the job would be very small, where a percentage would be very unreasonable and the client wouldn't accept it.

For example, you could have a small -- I'm talking not a home, but a complex engineering project that could cost $50,000 to do but your design fee might be $25,000 and they are certainly not going to give you a 50 per cent fee, so normally, the clients perfer to have it on a time card basis.

Q Is that done -- do you bill on that basis frequently or seldom or what?

A Very seldom.

Q Do you normally determine before you go into a job how you are going to bill?

A Well, normally, when you go into a job you have a contract, yes, sir.

Q If you were going to bill on a time card basis, that would be negotiated with the person you were contracting with?

A Oh, sure.

Q Has your firm been involved in other large projects where construction costs are in the billions of dollars?

A Certainly, yes.

Q Is it a large number of just projects?

A We,being a larger firm, don't get involved usually in the smaller ones, so we are normally involved in the larger projects, yes, sir.

Q In those larger projects involving multi-million dollar contracts, how do you normally determine the amount of your fee?

A On a -- on this recognized fee schedule, again, depending upon the complexity of the project, would depend upon what your fee would be.

Q Would it be on a percentage basis?

A No. It would be on a percentage basis -- yes.

Q It would not be on a time card basis?

A 99.9 per cent of your projects, and 99 per cent, let's say, is on a percentage basis.

Q Percentage of the cost of construction?

A Percentage. And the remaining ones are two groups, one is a fixed fee and the other is the few little projects on a time card basis.

Q This was not your first turnkey project with the National Homes that you had been involved in, was it?

A No.

Q Did the work or the experience that you had

gained on, for example, Warminister and the New Jersey project, did that have any carryover value on the South Carolina projects?

A Well, yes, because the more you do something the more profficient you become in it.

To give you an example of that: We have done over 300 or whatever school projects and certainly we can arrive at a solution of a school design and a school project a lot easier and in less time than an archtect who is tackling his first, second or third one.

You are more familiar with it. Everybody gains through experience in their professions, you gain through repetition, yes.

Q What is your standard fee for designing a school?

A Six percent.

Q Of the construction cost?

A Of the construction cost. That does not include incidental costs and fees on top of fees like some people think the architects get six percent of the total --

MR. SIMMONS: Objection, your Honor. I don't think the response is responsive to the question.

MR. MORRISON: He's just explaining what his customary fee is on a school.

A Six per cent.

Q Now, do you reduce the amount of your fee on a school if it takes you a little less time because of work you have done previously?

A No, sir. You are paid for the service you are rendering.

Q Have you ever had any other projects that your firm has been involved in where there has been a risk factor, and by risk factor I mean a situation where you might not necessarily get paid at all?

A At the present time we are working with a developer on a shopping center which the fee, again, is contingent upon he getting his mortgage commitment, which again is dependent upon him signing major leases, I don't know how many major ones, that's his part of the operation.

But there we're getting, and we worked it out, a fixed fee, and the building is 180,000 square feet and the normal way of --

MR. SIMMONS: Your Honor, I am going to object again. I believe the question was, were there situations where there were risk factors. I think

that has been answered.

We are rambling on here.

MR. MORRISON: Fine.

I will put another question to him.

Q Will you explain this shopping center example and explain how you are computing your fee?

A The normal way in a shopping center is to be paid a fee on a square foot of building, and this particular job we get, for the design, we get a dollar per square foot of area, and this particular building is 180,000 square feet.

Q What -- if in fact this project goes through and you get a fee, what would the -- that total fee be as a percentage of the expected construction costs?

A It's worked backwards to six percent. In other words, a 180,000 square foot building we estimated at around twenty dollars a square foot, which would be $360,000, if you take six per cent of that it's approximate, or equal to the fee, whatever it is.

Q Now, how does that six per cent compare to what the fee would normally be for designing a shopping center if there were no risk factor involved?

A It would be -- it's more than what it would be according to the sliding -- the scale that I was

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talking about.

Q And what would be on that scale, roughly?

A Approximately 4.5.

Q Did you understand that if National in fact submitted a bid on the South Carolina project and lost that bid, was it your understanding that Wiedersum would not receive a fee?

A We would not receive --

MR. SIMMONS: Objection. It calls for a conclusion, your Honor. His understanding, your Honor?

MR. MORRISON: I don't see why you would object to that.

THE COURT: Reask your question, counsel.

Q In the event that a bid was in fact submitted on the South Carolina project and it was not accepted, did you expect to receive a fee from National?

A We didn't.

Q Were you willing to take that risk?

A Yes, sir.

Q Now, ifyou had known before you started to work that National would not be submitted a bid, would you have prepared these drawings?

MR. SIMMONS: Objection, your Honor.

THE COURT: Overruled.

A Would you repeat the question.

Q If at the time you began working on the drawings on the South Carolina project you hadknown that National was not going to submit a bid, would you have done that work?

A No, sir.

Q If you had known that National was reserving the right to make a decision at the last minute not to submit a bid, would you have done that work?

A No, sir.

MR. MORRISON: Mr. Simmons.

CROSS-EXAMINATION

BY MR. SIMMONS:

Q Mr. Wiedersum, you testified that if you had realized that National would not be submitting a bid you would not have put any work into this project; is that right?

A That is correct.

Q Didn't you realize, Mr. Wiedersum, that there was a possibility that something might go wrong down the line, that aproposal might not go in?

A Never.

Q It didn't occur to you?

A It never occurred to me one, one minute, not one minute.

Q What was your understanding, Mr. Wiedersum, as to how long before the submission date your company was to have plans to National?

A I'm going from recollection as a result of the testimony in that we were supposed to have plans delivered by March 30th, was it, or whatever? I'm only repeating --

Q How long before was your understanding?

MR. MORRISON: I object unless he first establishes that the witness had knowledge of this. He just said he's going by the testimony.

Q Did you have any knowledge of when your company was to get plans to National?

A I probably was informed, but I don't have that knowledge now, other than -- so many dates have been discussed that I didn't have any knowledge. That wasn't in my province. That is the responsibility of others in the office.

MR. SIMMONS: May I have this marked for identification as Defendant's Exhibit D.

(So marked.)

BY MR. SIMMONS:

Q Mr. Wiedersum, I show you what has been marked for identification as Defendant's Exhibit D and ask you to identify that if you can, please.

A Yes.

It looks like a time sheet out of our time records, period ending 8/31/74.

Q Would you explain the columns, starting from the left.

A It has the employee -- employees are set by numbers, but we put the names in to make it more -- for more clarification for you people, and we have each one's hourly rate and then an accumulation of hours and the totals.

Q Does this relate to one job in particular?

A This relates to -- yes, the same job, 7318, which is the South Carolina job.

MR. SIMMONS: Your Honor, I ask that this be admitted into evidence and Defendant's Exhibit D.

THE COURT: Any objection?

MR. MORRISON: No, your Honor.

THE COURT: It will be received.

(So marked, in evidence.)

BY MR. SIMMONS:

Q Mr. Wiedersum. I note on the left there are-= there is a place for the employee's name, there is a column

labeled "Current Hours, Monthly Amount and Year Hours."

What are those -- what are the entries there next to the names of the various employees, what do they indicate?

A I don't -- I'm not the bookkeeper and accountant so I really don't know.

Q The first item is John Abramson.

A Yes.

But that was inserted in for your -- so that you could identify the people. I believe John Abramson is recognized by No. 101.

Q As is found next to his name?

A This is handwritten in.

Q That is correct.

A So that is not the form that the printout comes in.

Q Next to 101 that we have identified as Mr. Abramson, in the column "Year Hours," 40.50. What does that figure in that column indicate?

A I wouldn't --

Q It indicates, does it not, Mr. Wiedersum --

MR. MORRISON: Please, you asked a question. Let him respond.

A I don't know. Would you understand that I

don't even -- when I ask the accounting department for a total or information, they give it to me and -- Year Hours, to be honest, I don't even know what that means.

Q Mr. Wiedersum, you are here testifying today about the usual and ordinary expenses of your company, about the fees that you normally charge, and am I to understand your testimony that you cannot read the printout of the hours spent by your employees on a particular job?

A I'm saying that in all honestly, that I don't know what that column "Year Hours" means. I see a rate of dollars next to it, but I don't know the relationship between "Year Hours" if it were total hours I might understand what it meant, but this is a standard printout of these companies that do it standardly, so I don't read these and I don't know.

Q You indicated a moment ago that the name written in next to the numbers don't usually appear on the printout, isthat right, that they were put in for our aid, the aid of the attorneys for the defendant; is that right?

A That is my interpretation, because it's handwritten in here by one of the accountants, I'm sure. It wouldn't come this way from the -- a sheet like this comes from a printout company that we hire to keep records of all

of our time cards, and I'm sure that they don't handwrite out every sheet.

Q Have you seen this sheet before, this particular one?

A No, sir, I have not.

Q You have not?

A No, sir, I have not.

I think I have seen a summary sheet, but I haven't seen that particular sheet, no, sir.

Q Have you looked at any sheet, any of your accounting records to determine the number of hours that your employees spent in connection with this job?

A I did see a summary sheet. I don't have it. I saw a summary sheet of the number of hours and so forth on this particular job. I didn't see that particular sheet.

Q What were the circumstances under which you saw that summary sheet?

A Well, during our depositions you had requested for a time sheets -- you had asked if we had any time cards kept and I said I believe so.

You wanted them. I told the accounting department to get them. I gave the accounting department my hours and that's -- and they assembled it and sent it to our attorneys.

MR. SIMMONS: May I have this marked as Defendant's Exhibit E for identification.

(So marked.)

BY MR. SIMMONS:

Q Mr. Wiedersum, I show you what has been marked as Defendant's E for identification and ask you can you identify that?

A Yes. It's a letter written to my brother Norman from our site engineering department referenced to Charleston, South Carolina, and signed by Arthur Van Suetendael, our site engineer.

Q Do you recognize Mr. Van Suetendael's signature?

A More or less.

Q I notice that it is marked cc: for you, among others?

A Yes. Plus the accounting department.

Q Did you receive a fopy of that?

A I would assume so, in the normal course of business, yes.

MR. SIMMONS: Your Honor, I ask that this be admitted into evidence as Defendant's E.

MR. MORRISON: No objection.

THE COURT: Admitted.

(So marked.)

BY MR. SIMMONS:

Q Let me ask you to read the document.

A "During the preparation of site plans for submission in regard to the above referenced project, I prepared a complete set of site drawings which include road layouts, site gradings, storm drainage,

"My total time involved on this project was 105 hours.

"The site design included engineering of the site to approximately balance cuts and fills, as well as the engineering work necessary to insure proper site distances, both vertical and horizontal, and turn radii necessary for emergency vehicles and service behicles which would be expected to service the project.

"Neil Heinberg, Landscape Architect in this office, also spent considerable time drafting on this project."

Q That memornadum was prepared in connection with our request concerning the number of hours that your employees put in on this project, was it not?

A I would assume. I didn't instruct -- the accounting department, of which AEF, that is Allan E. Fennel

is head of that department, he's our controller. He would handle that. If you had requested that, which you did, I came back, told him to gather the information and assemble it. That's his responsibility.

Q When was it assembled -- I did ask you for that information.

A Yes.

Q Once that was assembled, you asked your accountant to assemble it?

A Yes.

Q Did you look at it?

A I probably glanced at one or two sheets of it, but I didn't look at it to verify the accuracy or anything else.

Q You didn't look at it to verify the accuracy.

Would Defendant's D have been a part of that submission?

A I would not have seen it. I didn't look at individual sheets like this. I looked at a summary sheet. I saw some kind of a summary sheet on hours, which I'm sure you must have.

MR. SIMMONS: Mr. Morrison, will you stipulate that this was produced by your firm in response to my request that your client compile the time spent by

your employees in connection with this project?

MR. MORRISON: I will stipulate that this is one of the documents we gave you in that connection.

I will not stipulate that this is the definitive list of the time and hours spent, because I don't know that that is a fact, and I think it is obvious from the documents here that this probably is not the fact. But I will stipulate that we produced this and that it is part of the documents.

MR. SIMMONS: Part of the documents. Fine, thank you.

MR. SIMMONS: Could I have this marked as Defendant's Exhibit F for identification.

THE CLERK: So marked.

(Somarked.)

BY MR. SIMMONS:

Q Mr. Wiedersum, would you identify that, please, if you can.

A I can tell you what is on it. I can't identify it. There is no signature on it. But it is a -- it says National Homes.

Q Have you seen it?

A I don't believe I have.

Q You can identify it as one of the documents that

might have been supplied to Mr. Morrison in response to --or to your attorneys in respone to my request to you to produce information concerning the amount of time that your employees spent?

A I saw a summary sheet. I haven't seen each individual sheet, and I would think that I haven't seen this particular sheet.

MR. SIMMONS: Mr. Morrison, will you stipulate that this is one of the documents supplied in re-response to our request?

MR. MORRISON: Absolutely, yes.

MR. SIMMONS: Could I have this marked as Defendant's Exhibit G.

THE CLERK: So marked for identification.

(So marked.)

MR. SIMMONS: Your Honor, I don't believe I have asked to have F for identification admitted into evidence. I ask that it be admitted at this time.

THE COURT: Let me have them and I will so indicate.

THE CLERK: Exhibit F for identification now marked into evidence.

(So marked.)

BY MR. SIMMONS:

BY MR. SIMMONS:

Q Can you identify Exhibit G for identification, and state the circumstances under which it was prepared?

A I assume this was prepared by Mr. Voorneveld on the notice from the accounting department to repare a listing of the hours that he had spent. I have not seen that particular paper.

MR. SIMMONS: Mr. Morrison, I --

MR. MORRISON: We will so stipulate.

MR. SIMMONS: Your Honor, I ask that this be admitted into evidence.

THE COURT: Very well.

THE CLERK: Marked into evidence.

(So marked.)

MR. SIMMONS: Could I have this document marked as Defendant's Exhibit H for identification.

THE CLERK: So marked.

(So marked.)

BY MR. SIMMONS:

Q Can you identify, Mr. Wiedersum, Exhibit H for identification?

A I certainly can.

Q State the cirucmstances under which it was prepared.

A I prepared it.

Q You prepared it?

A That's right.

Q What were the circumstances under which it was prepared?

A At the request -- during the deposition to prepare time spent on projects.

MR. SIMMONS: Your Honor, I ask that this be admitted into evidence, Defendant's H.

THE COURT: Very well.

(Received.)

BY MR. SIMMONS:

Q Mr. Wiedersum, do you have any documents with which you could testify today as to how many hours Mr. Laverty spent on the South Carolina project?

A I don't, sir.

Q You don't know how many hours he spent?

A No, sir. You did show me something just that I said that Laverty did sign it, but I don't recall the number of hours that you had.

Q I think it's Exhibit F. I don't believe it bears a signature, but it shows 33 hours.

A Well, I assume -- there is no signature, but it says 33 and I assume it's 33 hours.

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Q Is Mr. Laverty paid by the hour an hourly rate?

A No, he's paid by the week, weekly rate. A salary.

Q Excuse me?

A A salary.

Q What would that weekly rate have been in 1973?

A I have no idea.

MR. MORRISON: I object to that, the amount of a person's salary.

THE COURT: Sustained.

MR. SIMMONS: Your Honor, the pleadings and the requests submitted to the Court in connection with this case indica te that the plaintiff is making a claim for the value of expenses incurred, costs and expenses incurred in connection with this project.

Now, we have a statement that has been admitted was submitted by us in response to our request as to the amount of hours spent, but there is no indication as to the salary of this individual. We can make no determination --

THE COURT: I will allow the salary, but it

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but it doesn't seem to me to be important here.

MR. SIMMONS: Well, your Honor, I think it may be important to the extent that a claim is made--

THE COURT: All right, I may witndraw my statement if you keep on.

MR. SIMMONS: I'm sorry, your Honor.

BY MR. SIMMONS:

Q Could you give me the salary of Mr. Laverty?

A I could not. I'm sorry, I could not.

Q You don't know?

A I don't know.

Q I show you G. in evidence. It bears Mr.Voorneveld's name at the top and it indicates that a total of 40 hours was spent?

A Yes.

Q What was Mr. Voorneveld's salary in 1973?

A I could not testify to that. I don't remember.

Q I ask you again to look at Exhibit D, a summary sheet. Can you tell from that sheet the hourly rate or do you know the wages of the individuals listed there?

A I don't know the wages, what salaries any one of these people were getting. I still don't understand the "Year Hours." And there is an accumulation of dollars. That is all I can testify to.

Q As indicated by Exhibit E, Mr. VanSuetendael indicates that he spent a hundred and five hours.

A Yes.

Q What was his hourly rate at that time?

A Sorry, I could not testify to that.

Q Do you know if he was paid by the hour or did he receive a salary by the week?

A I believe everybody is on a weekly salary. I'm not even sure of that.

Q But you don't know the amount?

A I don't know the amount, no.

Q I show you Exhibit H, indicating, Mr. Wiedersum, that you spent 22 hours in connection with this project.

A Yes, sir.

Q How do you receive compensation for your work?

A How do I receive compensation?

Q Yes, how is it measured?

A Compensation for the three partners is at the end of the year if there are profits. They are equally divided by three, and if there are losses, they equally assume the loss. That's how my compensation is arrived at.

Q Do you know what your compensation for the year

was in 1973?

MR. MORRISON: I object to that, your Honor, because the witness' own testimony shows that there is no correlation between hours spent and the time that would be charged to a client, He's paid on a draw, based on profits and losses and that is entirely different from a question of hours spent and how you value those hours.

THE COURT: I would think that is so. I sustain the objection.

MR. SIMMONS: Your Honor, am I to understand that Mr. Wiedersum -- that it is not an issue in this case, the expenses and costs that might have been incurred --

THE COURT: I'm ruling, counsel, on the objection, and that is sufficient.

MR.SIMMONS: Thank you.

BY MR. SIMMONS:

Q Now, Mr. Wiedersum, if a successful proposal had been submitted and a contract awarded, did you make an estimate of how much time it would have required of company to do what was necessary in order to complete a contract, to complete the construction?

A No, I didn't. In fact, it was pointed out

before, the time cards and time spent is just useful within theoffice itself. I did testify that I allowed in that one per cent of the cost. I did do that.

Q Why did you select one per cent, did you pick it out of the air?

A An estimate by me. That is part of my job, to negotiate fees with clients and to establish costs.

Q I appreciate that, Mr. Wiedersum.

But I'm not asking you about a fee that you negotiated with a client, I am asking you what was the basis for your determination of one per cent in this particular case?

A My judgment more than anything. Having been through many projects before -- my judgment that it would cost us that to complete the project, both drawings, supervision, visitations to the site, expenses, and I took that figure. I don't think it was arbitrary.

I think it was an ample -- more than ample figure to complete the project.

Q It was your judgment?

A Yes, sir.

Q But you didn't form a judgment as to approximately how many hours it would have taken your employees to complete work?

A No. My partners may have been mad at my judgment if it cost us more, and they may have been very pleased with me if it cost less.

Q Other than the fact that it was your judgment, can you indicate anything that you based it on, any past situation?

A No. We -- I think the major indication here to me was the fact that after Mr. Laverty had gone to the Navy Department and reviewed what we had done previously and in discussions with that realizing -- and I did realize that we were going to have to do some amplification drawings, I'm sure of that, and I figured we would be called to the site more frequently, more cost of transportation, and I figures, just my judgment, one per cent, and that's how it was done, simply as that.

Q You are telling me that it was your judgment and that it was not arbitrary.

What I'm asking you is what was it based on, why one per cent and not two per cent?

THE COURT: He said it was based on experience.

Q But not on any estimate as to the number of hours that it would have taken?

A No, sir.

Q I believe you testified that a fee of five and

a half per cent was usual for projects of this type?

A Yes, sir.

Q What did you consult to determine that amount, that figure, that percentage?

A I think I testified the fact that there is a published schedule of fees that have been used throughout the profession for as long as I know and even longer than that when my dad was running the business.

It's used by every agency, including Federal, State, County, private contractors in negotiating fees with architects; that is used as a guide. It isn't hard and fast. It's a guide.

Q What is it called?

A "Minimum Fee Schedules for Architects," I believe, if my recollection is right.

Q There are a number of fees, a number of percentages stated on it?

A Yes, sir. I'll amplify it. Depending upon the complexity of the job. A very difficult design job, both architecturally, mechanically and structurally would command a greater fee than a simplified job.

Q Fine.

I believe you testified that that schedule shows a fee of five and a half per cent for a project that

you would call similar to this?

A Yes, sir.

Q How is that other project described in the schedule?

A Housing, just multiple housing.

Q Multiple housing?

A Yes. I believe that was the heading or something -- under housing. The whole schedule has churches, institutions, banks, blank blank, and all the way down, and one was housing, and if you looked under housing and you went across, for four and a half or four million dollars it was 5.5.

Q I see.

You testified about a risk factor for a shopping center and the fee being increased somewhat because of the risk factors involved.

What were the risk factors involved in the shopping center illustration that you mentioned?

A Right now there is a big risk because he hasn't gotten his financing.

It's temporarily held up, depending upon him getting his financing which he's working on, if the economy ever changes that job would become a reality.

Right now the plans are in the shop waiting. That is a risk.

Q You draft the plans and there is no guarantee that they are going to be used so you build in a risk factor?

A That is correct.

Q Did you build in a risk factor here?

A The whole project was a risk factor from the very beginning.

Q Is your testimony that you did build in a risk factor here?

A No. If anything we have a lower fee than what the schedule said, that we should ask 5.5 minimum and it's really a five per cent fee.

Q So you didn't build in a risk factor here?

A The only time you can tell if you built in a risk factor is when the job was completed and you looked at everything to find out if you had a risk factor in thereor you didn't.

Q Are you telling me that you don't know whether you built a risk factor in, is that your testimony?

A That's exactly what I'm telling you. I don't know if we did or not. We took a schedule of fees. This is the recognized fee. We went across and we reduced that a little bit and that was our fee.

THE COURT: I think, counsel, we are getting

into duplication of questions here.

MR. SIMMONS: I apologize, your Honor. I'll try to avoid that.

THE COURT: Very well.

Q You testified, Mr. Wiedersum, that the -- according to the fee schedule, the fee for a similar project would have been five and a half percent?

A Yes, sir.

Q I believe you testified, correct me if I am wrong, that you based your fee -- your fee was six percent in this particular case; is that right?

A Yes, but we --

Q Let me make sure I understand your testimony; is that correct?

A Yes. But I did testify before that we had built in this extra one percent for other work that had to be done and visitations to the sites and so forth.

Q So where do you take off the risk factor?

A I don't know what risk factor you are talking about.

Q I thought you said that you subtracted a risk factor in this particular case?

A No, I didn't say anything about a risk factor. I said we reduced it from five and a half to five.

Q I believe you testified that, Mr. Wiedersum, that in response to my request to you for information about expenses and costs incurred, that you asked your accountants to prepare something for you and you saw a summary sheet.

A At one time, yes.

Q Where is that summary sheet?

A I don't have it. I don't know.

Q You don't know where it is?

A No, sir.

Q Do you recall what it said?

A It had --

MR. MORRISON: Just a moment. I will object to that. I will state for the record that the summary sheet was prepared by Mr. Laverty at our firm's direction. It was not something that was produced for defendants because it was something that was consulted between counsel and client, and It was used in my discussions with Mr. Laverty. It has nothing to do with the documents -- it was not the documents that were given to you, and they were not the official records.

They were notes that Mr. Laverty made to consult with his attorney, and therefore, they are clearly covered by the attorney-client privilege.

MR. SIMMONS: I appreciate that. I made an inquiry in connection with Mr. Wiedersums examination that he supply me with certain information, and he tells me that in response to that request he saw a summary sheet.

Now, that has nothing whatsoever to do with attorney-client privilege. If he saw it he saw it, and I'm asking him where it is.

MR.MORRISON: Your Honor, the summary sheet he saw was prepared by Mr. Laverty for discussions with our firm, and it's part of our work product. We have no obligation to turn over memos that our firm does or that we consult with the client. It was not a business record.

It was not prepared to be given to you.

MR. SIMMONS: If Mr. Laverty prepared it and Mr. Laverty is an employee of the plaintiff, it can't be attorneys work product.

MR. MORRISON: It is privilebed because it was prepared in connection with this litigation.

MR. SIMMONS: It was prepared, your Honor, in response to my request for information. Mr.Wiedersum testified now that he doesn't know any of these figures.

THE COURT: You can ask questions, counsel, and I will rule on them.

BY MR. SIMMONS:

Q Where is the schedule, Mr. Wiedersum?

A I assume--

Q You don't know?

A No, I don't know. I don't have them.

Q Do you remember what it said?

A Not specifically, no. I looked at it. I have no control over the time spent. It's routine.

Q I appreciate that. I'm not saying you have control, sir --

A It's done by others, Ilooked at it, glanced at it and that was it.

THE COURT: I think we have vound that this gentleman was not familiar with that branch of the company. That was not his function.

MR. SIMMONS: All right, your Honor.

Q Mr. Wiedersum, I have one last question for you. I ask you to look at D again and can you tell me, sir, that the figure $6,556.02 shown at the bottom there was not the amount paid to these employees for the hours spent on that project, on the South Carolina project, can you say that that figure doesn't represent that?

A I will say that it represents a total of $6,556.02 for a period ending on the date of 8/31/74 for this particular project, and that is all I can testify to.

Q And you can't say that it represents the pay to these employees for the amount of hours spent in connection with this project?

A I would assume that we had names of employees relative to the numbers, evidently, that they were given and there is a figure here. I assume that certain things are done. But whether that is total or what,I have no way of knowing.

Q You say you assume that certain things are don't, are you assuming that one of the things done was to pay these employees that were listed here that amount for the number of hours indicated, in connection with this project?

A No, I won't testify to that. These employees would be paid regardless if it was on this job or any other job. They are on a weekly salary so it -- so there is no way that they got so many dollars over a certain period of time for this job, because it has no relevancy.

They are paid regardless of the hours spent and not spent, whatever.

Q But could this figure -- can you say that

this figure does not represent the allocation of their salaries for the time spent in connection with this project?

MR. MORRISON: I object.

That's been asked and answered.

THE COURT: I will sustain the objection. We have been over and over this point, counsel.

MR. SIMMONS: I have no further questions, your Honor, of this witness.

REDIRECT EXAMINATION

BY MR. MORRISON:

Q Mr. Wiedersum, did you have anything to do with the computation of the fee on the Warminister project?

A Yes, I did.

Q Did you consult your time cards for the employees when you computed that fee?

A I didn't.

Q Are you personally involved in computing fees on the schools and hospitals that your firm does?

A That is one of my prime functions, yes, sir.

Q Do you consult time cards when you compute those fees?

A I don't.

MR. MORRISON: No further questions.

THE COURT: Is that all of this witness?

MR. SIMMONS: I haveone or two more, your

Honor.

RECROSS-EXAMINATION

BY MR. SIMMONS:

Q In computing, Mr. Wiedersum, the fee for the Warminister project, you were basing that on the amount that you would have gotten in connection with a successful proposal going in, isn't that correct?

A That's correct.

THE COURT: Very well.

You may step down.

(Witness excused.)

MR. MORRISON: The plaintiff rests, your Honor.

MR. SIMMONS: Your Honor, I would like to -- can we approach the bench?

THE COURT: Yes.

(Side bar discussion.)

MR. SIMMONS: Your Honor, at this time we would move pursuant to Rule 50A of the Federal Rules for a directed verdict.

I will argue it if you want.

THE COURT: It is not necessary. I am familiar with the evidence as produced here. It is normal to amke a formal motion, and we understand that it is

based on what you have considered the evidence in the case to be. That will be recorded. Very well.

Are you ready to proceed?

MR. SIMMONS: Yes, your Honor.

MR. MORRISON: I would like to make a motion before he proceeds with his evidence, and I think it would be better to do it out ofthe hearing of the jury.

THE COURT: You want to make it now?

MR. MORRISON: Yes.

THE COURT: You are entitled to make it.

MR. MORRISON: Not a motion for a verdict, another motion directed to his evidence, before he proceeds, that I think we ought to do out of the presence of the jury.

THE COURT: Can't you make it here?

MR. MORRISON: All right.

THE COURT: Go right ahead.

MR.MORRISON: Your Honor, I received, after the jury was selected, Defendant's trial brief. In that trial brief, they say that one of their defenses to this action is the claim that the drawings, which our people submitted, were incomplete.

Now, that is the first time in this litigation

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that defense has every been raised.

It was not pleaded in their answer. I directed an interrogatory to defendants. I asked them specifically to state the reasons that no bid was submitted.

They gave three reasons: That was not given as one of the reasons. The first time that so-called defense was ever raised was in their trial brief which was served after we had picked the jury.

I feel that Under Rule 8 and under Rule 12 they have waived the right to present that, that is clearly an affirmative defense. It goes to failure of consideration. In essense, they are saying we didn't perform because the plans were incomplete and didn't have the proper details.

Now, that is the sort of thing that they have to plead. I would be happy to show you their interrogatory answer. I asked them the specific question: "Was there a decision not to bid?"

They said, yes. The next question was, what were the reasons for that decision?

They gave three reasons: One was that the plans came in late. The second reason was something to do with soil conditions. The third reason was that they couldn't get bids from subcontractors. They said

45 nothing about the quality of the plans that we submitted. I think it is clear that under interrogatory practice, they are bound by that naswer. They cannot now raise at trial a defense that has never been raised in this case.

I have some cases that I would be happy to show you.

THE COURT: I am familiar with your point.

MR. SIMMONS: Your Honor, I don't think that it is a defense that has taken them by surprise. They have come into court alleging the existence of a contract. If there was a contract, one part of that contract must have been the production of plans suitable for submission to the Navy. Those plans that were produced weren't suitable for submission, and I submit, your Honr, that that is part of their case.

But, in connection with the interrogatories served, the insufficiency of the plans thatwe received does relate to time, your Honor. It could have been corrected. Had it not been for the fact that these plans came in so late, itcould have been corrected. We have had evidence that in connection with the Warniminster project that final plans were mailed out a full ten days prior to the submission date.

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In this case the evidence has shown, their own evidence has shown that the submittal plans were--

THE COURT: I have the whole background. I am with it. I grant the plaintiff's motion.

MR. MORRISON: Thank you, your Honor.

THE COUPT: Very well, you may proceed.

(Open court.)

THE COURT: We will have a ten-minute recess at this point.

(Recess taken.)

(Jury present.)

MR. SIMMONS: Can I proceed, your Honor?

THE COURT: Yes.

MR. SIMMONS: Defendant calls John Gleason.

(continued next page.)

JOHN GLEASON, was called as a witness herein, and having been first duly sworn by His Honor, Judge Bruchhaussen, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. simmons:

Q Mr. Gleason, by whom are you employed?

A At the present time, by F& R Builders, Inc..

Q Was there a time when you were employed by National Homes Constructions?

A That's corredt.

Q What period of time was that?

A That was from September, 1970 through the latter part of August 1973.

Q Were you an officer of the company?

A That's correct.

Q And what was your office between, well, say, in January, 1973?

A January of 1973, I was vice president of Multi-family Housing.

Q Did that office change before you left the company?

A Yes. On May 1st, I became executive vice president of contracts division.

Q Would you please explain the difference between Multi-family and contracts division, what was your job in Multi-family?

A Basically the job with Multi-family was precisely the same as it was after May 1st, however, at that time I was involved only in the Multi-family contracting.

Multi-family, being anything that had a project of fifty or more units.

Q How many years of experience have you had in the construction industry?

A Give or take a few months, thirty years.

Q In what various aspects of that business have you been involved? What are some of the jobs that you have held?

A I have been extensively involved in military type housing, dealing with large projects such as Hamilton Air Force Base in California; Travis Air Force Base in California; contracting work directly for the Government with relation to projects such as those.

Q Were these projects you have referred to as examples these turnkey projects?

A Yes, sir.

Q Could you give me an idea of the approximate number of turnkey projects that you have been involved with

over the years?

A You mean projects that bids went in on or prcjects that we went to contract on?

Q Start with those that you went to contract on.

A Offhand, I would say it would be in the neighborhood of 30 to 35 projects.

Q Do you have any idea of how many housing units that would have covered?

A I would say right in the very close proximity of 10,000 units.

Q Would some of those projects have involved other than housing?

A All of the projects would be the site development, the complete project on a turnkey, from the raw land through completion.

Q And approximately how many projects were you involved with for which contracts weren't awarded?

Do you have an idea?

A I would say that we submitted bids that we were unsuccessful on probably a hundred and thirty to a hundred forty projects.

Q WEre you involved with projects that didn't reach the bidding stage, on which your company had done some work?

A Yes, there have been projects such as that.

Q Could you describe for us the different functions of an architect and a builder, in connection with a turnkey project?

A Well, the architect and the engineers are the developers, the designers of the plans or road maps, if that's what you want to call them, from which the builder takes those plans and constructs the project, does the building, establishes the price.

Q Now, who has the responsibiltiy for actually constructing the building?

A Who has the responsibility? The contractor.

Q Have you been involved in projects where the expenses were greater than anticipated?

A Yes.

Q Who shoulders those expenses?

A The general contractor.

Q It is possible,isn't it, to be both the contractor and the architect for a turn key project?

A That would depend on the state that you are in.

Q But in those situations in which you have been involved where there was a separate architect and a separate contractor, the contractor bore the expenses of any

overruns?

A That's correct.

Q What is a pre-proposal conference, Mr. Gleason?

A A pre-prosal conference is a conference whereby all interested parties, that is, parties interested in putting in a proposal or a bid on a given project, are invited to attend to ask any questions they might have from the information that has been furnished to them prior to the preproposal conference, get any clarification that they might have; they have had an opportunity to visually check the site, the area, the existing buildings around it, any problems that may visually occur on a project whereby the buildings and the site developments are going to be made.

Q How detailed would the information that you would have prior to a preprosal conference be, what sort of information?

A That we get from the military?

Q Yes.

A That is variable. That is variable. In some jobs the information is quite detailed. I think a person would have to go as to go as to whether it is the Air Force, the Corps of Engineers or the Navy.

Q Take the Navy as an example.

A I would say that the Navy probably fits in somewheres between the Corps of Engineers and the Air Force.

Q Is it fairly detailed; does it give you a pretty good idea of what they require?

A It's a fairly complete sketch of the requirements, yes.

Q When, for the first time, did you become aware of the South Carolina project?

A Normally -- not normally, a builder that has expressed interest in military programs goes on the military's bidders' list, and at that time -- when they come out with new projects you are submitted -- first of all, you normally will get the allocations for the particular branch of the military sometime during the first part of the year, or sometime during the time that the allocations for the military are announced, of which --

Q I'm sorry, had you finished?

A Yes.

Q You mentioned allocation; what does that mean? The allocation for the year?

A The Federal Government will set forth a sum of monies that will be spent for various phases of military construction, and this in turn will be split over a number of projects in a given area.

Q Is it your testimony that you can sort of determine what projects are going to come out or whether projects are going to come out when you see what the allocation is going to be?

A Fairly close, yes.

Q When did you become aware for the first time that the South Carolina project might be coming out; that a project was coming out?

A The first time I became aware of the Navy allocations or the possible Navy projects was at a meeting at Wiedersum's office prior to Christmas in 1971.

Q What was the purpose of that meeting?

A We had submitted a bid on the plans and -- engineering plans and specifications prepared by Wiedersum on the Warminister job. We were not the successful bidder. So they had investigated after the normal time of 90 to 120 days as to the outcome of our bid, and they had secured this information from the Navy Department. They had called and apprised me that they had this information, and could I come into their offices the next time I was in New York.

Q You mentioned 1971. There are some documents in this case that -- you have mentioned a meeting in December of 1971. There have been some documents in this

this case that have indicated the preproposal -- that the submission for the Warminister project was in February, I believe, of 1972.

A I'm sorry. I misspoke, that was not '71. That was '72, I believe.

Q So you had a meeting at Wiedersum's offices then in December of 1972.

How did that meeting come about?

A In December of '72?

Q Yes.

A As I explained, they had gained some information on the unsuccessful bid that had been submitted on Warminister, and they had called and asked if I would be interested in coming in and discussing it with them because it's kind of a critique of what had happened in the past.

Q Who was present at that meeitng?

A At that particular meeting it was Al Voorneveld and Mr. Laverty and for a short time, Mr. Wiedersum.

Q Were you the only person present for National Homes?

A That's correct.

Q What was discussed at the meeting, specifically?

THE COURT: Was the Warminister job the South Carolina job?

MR. SIMMONS: NO, your Honor.

THE COURT: It is not the South Carolina job?

THE WITNESS: No, it is not, your Honor.

Q What was discussed at that meeting, Mr. Gleason, that indicated that a project was coming out?

A Well, they had the information as to the successful bidder. Also, if I recall the amount of that bid, which would give us an idea where we stood dollarwise in relation to it, and also the valuation of the points.

While they didn't actually have how they had arrived at the points, I think we pretty well put it together at that meeting that day as to how the Navy had arrived at their total number of points.

Q What are the points that you are referring to?

A On the military Step One type program, they have a set of guidelines or rules, shall we say, whereby they have various values for them and as an example, the elevations have a building, the attractiveness of the elevation, the durability of the materials on the exterior of the buildings, the general overall layout of the site, all of these have points on them -- I mean a point value established for each. Then they will take the total number of points that a proposer has gained from their evaluation.

This coupled with their price will determine

the award winner.

Q But the Warminister project had already been bid and you had not been successful?

A That's correct.

Q What was thepurpose of having a meeting to discuss that?

A With the military it's also advisable to try to be at least, if not one step ahead of them, try to anticipate what they are going to -- you know, what they are basing their decision on.

Q And what were you trying to anticipate in this case, why?

A As I stated, we are -- at that time National was extensively involved in bidding the military, and while we had only bid the one Navy job, we werenot against bidding any, you know -- we were not against bidding the Navy job, so we wanted to secure all the information we could about a Navy job.

Q Now, did any information come to your attention at that meeting about other Navy jobs?

A Yes. At this meeting Mr. Laverty brought out, I believe it was Mr. Laverty, he had been following it up, brought out that there was -- there had been an allocation set aside for various Navy jobs.

Q Were other jobs discussed in any more detail than that, otherthan the possibility that there would be jobs coming out?

A I do believe there were two or three Navy jobs mentioned in that particular meeting.

Q Was there a discussion at that meeting about the -- how costs and expenses of the various parties, you and your company, and Wiedersum were to be handled?

A As I recall, it was not at the meeting, it was at a lunch.

Q What time of the day did the meeting start, if you can recall?

A I believe I had a late afternoon appointment at UDC and I had arrived in New York early in the morning. They had picked me up at the airport and, as I remember it, my plane would get in about midmorning.

Q So it started midmorning and lasted through lunch; is that it?

A Yes.

Q What was discussed at lunch about the expenses and costs that you incurred?

A They were concerned that the costs that they had incurred on the development of the plans for Warminster--

Q When you say "they" who raised this?

A I'm not positive whether it was Mr. Voorneveld or whether it was Mr. Wiedersum. It was one of the two gentlemen.

Q What else was said?

A They asked if we could possibly see anyway, or anyway that we could reimburse them for a portion of their costs.

Q What did you say?

A I said that it was one of the unpleasant parts of a bid that anybody that did enter into a bid, whether it be a general contractor, an architect or a subcontractor, they incurred costs and if they didn't get the bid they didn't get their costs back, and there was nothing we could do about it. It was not corporate policy.

Q Had you incurred costs in connection with the Warminister project?

A Very definitely so.

Q Is that all that was said at that meeting, either about sharing expenses or about future projects?

A Basically, that was the concept of it.

Q When did you next hear of anything concerning the South Carolina project?

A I received a letter from Mr. Laverty advising me of the definiteness of The South Carolina project, asking

me if we would be interested in it.

Q I show you what has been admitted in evidence as Plaintiff's Exhibit 4.

Is that the letter that you are referring to?

A That is the letter.

Q Other than the information about the project stated in the letter, what did you know about the project? Did you have any other information?

A At that particular time, none.

Q There were no enclosures with the letter giving you more detailed information?

A No.

Q I show you what has been identified as your response to Mr. Laverty's letter. It's been admitted in evidence as Plaintiff's Exhibit 5. Is that your response?

A That's correct.

Q What information did you have about the South Carolina project at the time you wrote that letter?

A At the time I wrote this letter of January 29, I had absolutely no information other than Mr. Laverty's letter.

Q So you knew then that it was a proposal for the construction of two hundred housing units and that the funds available had been quoted at three million and so

many hundred thousand dollars?

A That is absolutely all I knew.

Q Now, at the time you sent this letter to Mr. Laverty, the letter that you have in front of you, Exhibit 5, had you made a decision as to whether you were going to submit a proposal for this project?

A Absolutely not.

Q I ask you to look at the second paragraph of the letter, if you would, and read that for me.

A The second paragraph?

Q Yes.

I believe it's the second paragraph. Let me make sure. Yes.

A "After we received the specifications and have had a chance to review same, I feel it advisable that our people who have been working on the Air Force project meet with your people to discuss the proposal in more detail. I would further propose that our architect and estimator attend the preproposal meeting along with the people from your office on February 14th, only because of the many meetings they have recently attended and the fact that they might ferret out some information otherwise missed that will be helpful to you in the development of the plans."

Q You suggest there that your people will attend the conference with representatives from Wiedersum.

Is it customary for the architect to attend the preproposal conference?

A Yes.

Q Did Wiedersum in fact attend the preprosal conference in this case?

A No, he didn't.

Q When did it come to your attention that they would not attend or that they had not attended?

A Approximately, as I recall, it was approximately two days before the preproposal -- the preproposal conference.

Q How were you informed; how did you discover that?

A Mr. Payne, our chief estimator, came to me and advised me that Wiedersum had informed him that they were not sending a representative to the preproposal conference.

Q What did you say to that?

A I told him that it was essential that we have an engineer there. And that we have if not Wiedersum's, our in-house architect there to gain all the information they could from the conference.

Q How was it finally resolved?

A I instructed Mr. Payne to see if our engineer that had been working on Air Force projects for us was free and could attend the preproposal conference as our consultant on it.

Q You say as your consultant. You said your engineer. Was he an employee of your company?

A He was an outside engineering service that was preparing engineering plans for us on other military submissions.

Q And he volunteered to go for you?

A No, sir, not in this particular case he didn't.

Q You said he attended.

A He attended. He didn't volunteer to go.

Q What does that mean?

A We had to take and reimburse him for his expenses in going down there.

Q You had to pay him?

A Yes.

Q When did Mr. Payne first become involved with the project, as far as you know?

A I don't remember the exact date that he received the specifications on the South Carolina job. But it was at this time that he became involved in it.

MR. SIMMONS: Could I have this marked for

identification as Defendant's Exhibit I.

THE CLERK: So marked.

(So marked.)

BY MR. SIMMONS:

Q Can you identify this for me, Mr. Gleason?

A This is what amounts to a notification of bid or appropriation.

Q Would this be the criteria that you spoke of?

A This would be -- yes, this would contain information on the criteria.

MR. SIMMONS: I ask that this be admitted into evidence.

THE COURT: Any objection?

MR. MORRISON: No objection.

THE COURT: Mark it.

(So marked.)

BY MR. SIMMONS:

Q You mentioned Mr. Payne receiving the criteria. What happened then?

A That is, if I might add, only a portion of the criteria received.

Q What else would be involved to constitute the total criteria?

A There would be data pertaining to the particular

requirements for that area on the structures. There would be data pertaining strictly to the site work, the improvements.

Q Would this be in the form of maps?

A This could be in maps or it could be in small tracings, or drawings contained within a booklet approximately eight and a half by eleven size.

Q And together this would tell you what it was that the Nave wanted; is that right?

A Yes.

Q You said when Mr. Payne received the criteria something happened.

What happened?

A He would review the criteria prior to the pre-proposal conference.

Q What happened then, did he attend the pre-proposal conference at your suggestion?

A Based upon his review and based upon the information that he received from it, there would be a discussion, because very often you find some very unusual items in there. The decision is then made to go to the preproposal conference, and this was discussed and it was determined that he would go to the preproposal conference.

Q What sort of factors would you consider in trying to figure out whether you wanted to go to the pre-

proposal conference or not?

MR. MORRISON: I object unless you are asking what he did in fact. I think your question was what would you normally consider, and that would be irrelevant.

THE COURT: Can't you bring about what he knows about it.

Q What factors were in fact considered here in determining whether to go to the preproposal conference?

A After going through the criteria, Mr. Payne pointed out the fact that there were silt conditions, there were swamp conditions, and he said that even though the project looked very attractive, it was an area that we felt had to be explored at a preproposal conference period.

Q At the time of the preproposal conference you hadn't made up your mind to put in a preproposal; is that right?

A Absolutely not.

Q Who attended the preprosal conference for you?

A Mr. Payne, our in-house architect, BillWard, and Mr. Walton, the engineer I referred to.

Q Did there come a time that they reported to you, one or more of them reported to you what had transpired

at the conference?

A Yes.

Within a matter of two days after the return.

Q And what did they report, in substance?

A They gave me a report of what each of them had found in their particular area.

Q What happened then?

A The determination was made that we would then again meet with Wiedersum.

Q Did such a meeting take place?

A Yes.

Q And when?

A Shortly after the preproposal conference.

Q Do you recall the date? There has been testimony that a meeting was held on February 26th.

A It would have had to have been in February, yes.

Q And who was present at that meeting, for National?

A At that particular meeting, myself, our manager of the multi-family fabrication for the parent corporation, Mr. Bob Lundstrom; the architect for the parent corporation manufacturing plant, Mr. Glen Smith, and Floyd Payne.

Q You mentioned Mr. Lundstrom of the parent

corporation.

What do you mean by the parent corporation?

A That is National Homes Corporation.

Q Why were they involved?

A Because of the manufacturing facilities. They manufactured the component parts of the structure, the parent corporation did.

Q And National Homes Construction would put up buildings based on the materials supplied by the parent corporation; is that it?

A That's correct. National Homes Construction Corporation is a wholly owned subsidiary of National Homes Corporation.

Q Why was Mr. Lundstrom present at the meeting?

A Because he being the manager of Multi-family Manufacturing would and was charged with the responsibility of the, shall we say, the profits of that division.

Q He would also be in charge of supplying the materials that you needed?

A Very definitely, the component parts of the building.

Q Who was present at the meeting for plaintiff, for Wiedersum?

A There were several people present. The two principal people that I can distinctly remember was Mr. Voorneveld and Mr. Laverty.

There were various department heads who came in and out of the meeting, all, you know, while the meeting was going on.

Q How long did the meeting last?

A We had another meeting in -- at UDC in New York that morning, and that broke up -- that meeting broke up approximately -- well, prior to lunch.

We went from there directly out to the Wiedersums. So the meeting lasted the bigger share of the afternoon.

Q What did you discuss at the meeting?

A The results of the preproposal conference. The items that were pointed out down there specifically from the questions asked by various proposers, some of them being our own. Points that were -- points that were areas of concern.

Glen Smith and Bob Lundstrom went into detail as to what the standards and criteria of the manufacturing corporation were so that the design they were coming up with would be compatible with what the manufacturing corporation could develop.

Q Would it be fair to say that you discussed problems that had to be resolved if you were going to go --

MR. MORRISON: I object.

That is highly leading.

THE COURT: Sustained.

Q Did you discuss problems?

A We most certainly did.

Q What sort of problems?

A One of the things that was -- that we were concerned with was the criteria set forth, and it was brought out again that the buildings would be compatible with the buildings already existing in the area.

Q You mentioned Mr. Lundstrom talking about the structure being compatible with what?

A With the manufacturing standards of the National Homes plant.

Q What does that mean?

A Well, the easiest way to explain it is that they are a component, in other words, they manufacture a prefabricated structure and your exterior walls have certain components such as windows, the size of windows, the openings, the placement of studs, the placing of the backing in relation to solids, corners; the connection of your panels with each other, because they don't come in 40-

foot lengths, they may come in, you know, engineered to twelve or modulars of four feet only.

Q These components then, do they change from project to project?

A You mean from this project to another project?

Q Yes.

A THis is the purpose of it. And the success of a component manufacturing plant is to keep them as nearly similar in the overall type of construction as possible. Regardless of whether it be a project here or a project there.

Q You try not to vary from the components?

A We very no more than is absolutely necessary.

Q What did Mr. Lundstrom say about his concern that you spoke of?

A He was concerned of the -- one of the items in particular was the type of siding that was going to be used, because the military had very bad experiences with aluminum siding and they would only allow it at a certain height above the ground, and he was concerned as to the material that would be used in lieu of aluminum siding, because of the problems encountered in shipping of it, after it was applied to the exterior of the building. That was one of the items I specifically remember.

Q Was there any discussion of timing?

A Yes. The plant was screaming for two weeks minimum.

Q You say the plant was screaming, what do you mean by the plant?

A In other words, at this particular meeting Mr. Lundstrom was screaming for two weeks minimum.

Q What does that mean, two weeks minimum?

A For him --

MR. MORRISON: I object to what does that mean. You can ask him what did Mr. Lundstrom say, but I object to "What does that mean?"

THE COURT: Yes.

Q What did Mr. Lundstrom say?

A He went into -- he was very demanding that the plans be in the pricing section along with the description of materials two weeks prior to our need for the final price.

Q Did he say why they had to be in the pricing section that long before?

A Yes, there is a certain amount of engineering that has to be done to make certain that it is compatible, that it does comply with what they can manufacture.

They want to update their latest costs; they have to update their latest costs.

Q What do you mean they have to update their latest costs?

A Materials are continuously fluctuating. Materials that go into the manufacturing of the component parts continually fluctuate, so they have to determine as well as possible not only what the price is at the time they prepare the bid, but hopefully with a reasonable amount of insurance what the price is going to be six months hence.

Q You said Mr. Lundstrom stated the plans had to be in the pricing section two weeks ahead of time.

WHat plans did he refer to?

A The plans that were going to be built, -- for the buildings that were going to be build.

Q Well, would plans in a situation like this go through various stages?

A Not development of any project you would go from preliminary plans to final plans, yes.

Q Would those be the stages; would they be broken down further, preliminary and another breakdown, perhaps?

A They could be.

Q But at least those two?

A At least those two.

Q Would there ever come a time, Mr. Gleason, when plans would be further revised once they had reached the final stage?

MR. MORRISON: I object to the hypothetical question like this. "Would there come a time."

THE COURT: Reframe your question.

Q Mr. Gleason, you referred to plans going through various stages. I believe you said preliminary and the last stage that you referred to was what?

A Final.

Q Would there ever be any revisions, in your experience, of final plans?

A I don't ever recall of ever seeing a final plan that hadn't been revised at sometime or other.

Q The plans that are actually submitted to the Navy, to the military, what are they referred to as?

A They are the final contract documents, or the final contract plans.

Q Are they something other than what you would refer to as final plans, are they final plans plus or minus something else?

A No. They would be final plans with the latest revisions.

Q The latest revisions?

A Correct.

Q What was it that Mr. Lundstrom indicated that he needed two weeks prior to the submission?

A He needed the final plans.

Q Do you know why?

A so that he could establish accurate costing, because when he turned these prices into us, this is what we wrote -- if we had been the successful bidder, this is what we would have written the contract to the parent corporation for the package, that is based upon the price that he turned in.

Q So this would have been the final plans with all the revisions?

A That's correct.

Q Do you recall anything being said at the meeting as to who was going to head up this project for the Wiedersums?

A Yes. Al told me that he was extremely busy and had an increased workload, in fact, that particular day he had another client in the office, and he announced that Laverty would be the ramrod on this particular project.

Q Al, Mr. Voorneveld?

A Al Voorneveld announced that, that Laverty would be the ramrod.

Q Did he use that term?

A As near as I can remember.

Q At that meeting, Mr. Gleason, were you asked for a commitment to put in a proposal by anyone before -- by anyone from Wiedersum before they started to work?

A It was never discussed.

Q Did you make such a commitment?

A Absolutely not.

MR. MORRISON: I object to that.

Q At that time, at the time of the meeting, had you made up your mind as to whether a proposal was in fact going to be submitted?

A At that time, we were very hopeful that a proposal could be submitted.

Q Did you discuss that hope with Mr. Voorneveld?

A Negative.

Q What was said about what you were going to do, about what you, National and Wiedersum were going to do from then on, on this project?

A As I say, there were meetings between the various department heads and the people in attendance, other than myself and Al Voorneveld, we might have stuck our ear into one meeting here or there, but we were not that deeply involved in the, shall we say, nuts and bols discussion.

Everybody were pretty well in accord as to what was expected. I think everybody was in accord that we were going to go in a definite direction to develop final plans and --

Q What was said about that, about going in that direction to develop final plans, do you recall anything specific?

A There was never any definite -- there was never anything, to my recollection, spelled out saying yes, we will go to final plans or, yes, we will put in a bid.

Q Did there come a time when either you or Mr. Voorneveld or someone else sort of called everybody together to sort of terminate the meeting?

A As I recall it, it was Mr. Laverty that made the statement just prior to the meeting breaking up, and asked if there was any questions, you know, that their people could answer at this time, and he asked his people in turn did they have any questions.

And everybody more or less agreed thatthey were in accord withthe department they had been working with.

Q Do you recall saying "Let's go get this one"?

A That is a favorite expression of mine.

Q Who were you talking to when you said that --

did you in fact say it here, do you remember?

A I undoubtedly did, because as I say, it's a favorite expression.

Q Who were you talking to when you said that?

A To the group in general, as much as to my men as I was to theirs.

Q Did there come a time when Wiedersum drafted preliminary plans for this project?

A Mr. Payne met with them at least once, to my knowledge, and when he returned he brought back preliminary plans.

Q Do you know about when that would have been?

A The early part of March.

Q Did you see those plans?

A Negative.

Q What would National do with those plans, was there an established procedure?

A Yes. The estimating department would take it. There would be discussions with the plant architect to peruse the plans, make suggestions or corrections and relay these in turn back to the architect.

Q Wiedersum?

A Right.

Q How were you involved in this project? If you were in fact, involved?

A At that particular time, other than the administrative end, I was not actually involved in it other than the administration.

Q What is the administration of it, what were you doing?

A What was I personally doing?

Q Yes.

A We did have several other projects under construction at the time, both military and civilian. We had one with, as I say, UDC here in New York.

Q Would anyone consult you concerning matters on the South Carolina project?

A Very definitely.

Q Do you recall being consulted about some?

A I was -- the estimating department as well as the various field departments would report daily.

Q How large a company is National Homes Construction?

A That particular year, if memory serves me right, they were the eleventh largest builder in the country.

Q How many people would that constitute?

A You mean personnelwise?

Q Yes.

A Lafayette, I think --

Q I am speaking of not the parent company now, but National Construction.

A National Homes Construction Corporation?

Q Yes.

A The Multi-Family Division itself would have approximately a hundred and fifty to a hundred and eighty men.

Q And you were head of that division?

A Yes.

Q Who is Mike Bolka?

A Mike Bolka was one of our estimators in our estimating department.

Q Now, did he have any duties in connection with this project?

A Yes, he had duties on this project.

Q Did he work directly under you?

A Negative. He worked directly under Mr. Payne.

Q Do you know what his duties were, what tasks were assigned to him?

A Yes.

Q Essentially, what were they?

A He was assisting in the take off of the materials on the plans, but on this particular project he was primarily

charged with the responsibility of securing prices, unit prices from the area in which the job was going to be built.

Q You mentioned take-offs.

What does that mean?

A Quantity take-offs, in other words --

Q What does the term "take-offs" refer to?

A You take a set of plans and -- for example, you would take your foundations and you would determine the amount of concrete, the amount of block that went into it, the lineal footage of foundation footings, dem walls, turndown slab beds, steel, mesh. We were furnishing our own package so the manufacturing plant takes that off, he would determine the amount of dry wall that went into a building, painting surfaces to be painted.

Q He would determine that. For what purpose?

A So that we could establish a cost.

Q And how would you establish that cost?

He would determine what is needed; is that right?

A Yes. He would not determine what was needed, he would determine the quantity of what was -- what it would take to complete the job from the engineering plans.

Q I see. And what would he do once he determined

the quantities?

A After the quantities had been determined, then we would send an investigator, for lack of a better word, into the immediate area and he would secure that areaand get the -- as many prices as he could.

Normally, the rumor was we would get a minimum of three on each item. For example, if we were bidding sewers, he would go to the sewer contractors in the area and hopefully, if he had a set of plans, get bids from the sewer contractors of what this job will cost us complete, and he would secure this from three or more.

Q Was that to be Mike Bolka's function in this particular project?

A On this particular one he was assigned the responsibility of securing that area.

Q And Floyd Payne, his responsibility?

A Floyd Payne was our chief estimator.

Q And what does that mean?

A Floyd was charged with the responsibility of making certain that the take-offs were properly -- were accurate.

He would then apply to those take-offs the unit prices that were being fed to him from the personnel that had gone into the field to secure these prices.

Q You say unit prices. Give me an example.

A Well, for example, eight by eight by sixteen concrete block. They will vary from area to area, so we would determine what it is selling for in the given area.

We would determine what mortar was selling for, we would determine what the labor of laying that block was going for. We would determine what the price of reinforcing iron was going for.

We would determine what the price of concrete was going for in the area. We would do that by the yard.

Q What Mr. Payne would do then is determine the quantity of materials, the labor that was necessary, and Mr. Bolka would visit the area, determine the prices for those various quantities?

A That is correct. Mr. Bolka would not extend the unit cost.

Q What does that mean, extend the unit cost?

A He would feed his information in to Floyd, or into the Lafayette Office. That price would then be put to the quantities, and it would be extended up.

Q I think you mentioned that Mr. Payne picked up some plans at a meeting in New York. I think you testified that you didn't see those plans.

A That's correct.

Q Did you discuss them with Mr. Payne?

A It's very doubtful. Just in passing.

Q Who is Orville Dooley?

A Orville is or was at that time the assistant manager of Multi-Family.

Q He was directly under you?

A He was directly under me.

Q Was he an officer of the company?

A Yes.

He was an assistant secretary.

Q What were his duties in connection with this project, the South Carolina project?

A On the -- because of the many duties that he had and the load of work he was carrying on the other projects under construction, I had withdrawn him from the military program, other than to ascertain that the documents, the final bid documents, were prepared, because of his expertise in doing so.

Q Now, what are the bid documents?

A At the time you submit the bid to the Government, you submit all of the addendums that you have been supplied, you submit all of the various proposals that they say goes with the contract. You have the opportunity

of submitting, or at least they normally give you the opportunity of submitting options, as we call them.

You make certain that those are in and are properly listed and identified. You make certain that the bid is broken down in accordance with the Government -- the way the government wants.

One job they may want it broken down to where you say the site work is going to cost X number of dollars, the two bedroom homes are going to cost X number of dollars, the three-bedroom homes are going to cost X number of dollars and separate it.

Q Would this be more than just a few pages?

A Normally it would -- I believe that -- I don't remember this particular one, but most of the military bids are all contained probably in fifteen to eighteen pages.

Q Physically, what would they look like?

A Typical government contract, eight and a half by eleven, and because of economy reasons normally stapled together.

Q And who would have printed up the forms, the documents?

A The military department of which you were bidding would supply them.

THE COURT: Counsel, we will now suspend for

our noon recess.

You may withdraw, members of the jury, until 2:00 p.m..

(Witness leaves stand.)

(Jury excused.)

(Whereupon, luncheon recess was called until 2:00 o'clock p.m.)

xlpmrl

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1 AFTERNOON SESSION

(Jury present.)

JOHN GLEASON, called as a witness, having been previously sworn by the Clerk of the Court, resumed and stand and testified further as follows:

MR. SIMMONS: Your Honor, before we continue, it was my intention this morning to move to admission into evidence of all the documents identified.

I'm not quite sure that I did that, and I would make that motion at this point, on the chance that one of them was not properly moved into evidence.

I believe I moved the admission of all of the documents that I had marked for identification this morning --

THE COURT: We will bear that in mind, I will say that. They will all be marked.

THE CLERK: Documents marked for identification as Defendant's Exhibits D, E, F, G, H and I, are now received into evidence.

(So marked.)

DIRECT EXAMINATION

BY MR. SIMMONS (Cont'd):

Q I believe when we broke for lunch, Mr. Gleason, we were talking about bid documents.

Again, what are bid documents?

A They are the forms that are prepared by the military. They have many sheets that make up the big document. The cover any addendums that were included in the criteria or were sent out after the criteria.

They include the contractors certifications as to wages, fair employment, any certifications that the contractor is certifying to that is different than the criteria may have; the contractors bid price as well as any alternates he may have.

Q Is there a term in the industry to describe these documents?

A They are sometimes called the proposal or sometimes called the bid documents.

Q Do you know of any other use of the term "bid documents" than to describe these documents that you are referring to?

MR. MORRISON: I object to that.

THE COURT: He may answer.

Q You may naswer.

A I do not know of any other interpretation of bid documents, no.

Q I believe you said you asked Mr. Dooley to obtain the business documents.

From whom was he to obtain them?

A From Mr. Laverty.

Q Now, why would Mr. Laverty have them?

A Because when the -- when they give the invitation to bid, it was the identification number that came back from the Navy Department that was made out to the person or the company that had requested the bid documents and the criteria, so the identification number was assigned to Wiedersum.

As a result, the bid documents would have been forwarded to them.

Q If a proposal had gone in, it would have included Wiedersum plans, would it have not?

A Correct.

Q Why then could the bid documents have not been filled out by Wiedersum?

A If they had been filled out and submitted by Wiedersum, then Wiedersum would have been the general contractor on the project.

Q There was a requirement that they be filled

out by the contractor?

A Correct.

Q What did you tell Mr. Dooly to do, specifically?

A I instructed him to get the bid documents as well as a transfer of the identification number to National Homes Construction Corp.

Q Did you tell him who at Wiedersum he should contact?

A Yes, to contact Mr. Laverty.

Q What happened next as far as you know concerning the bid documents?

A To the best of my knowledge, the bid documents arrived shortly after the first of April.

Q Now, Mr. Gleason, I want to show you what has been identified as Plaintiff's Exhibit 11 in Evidence.

Did you ever see those plans or copies of those plans?

A Yes, I did.

Q When did you see them?

A The early part of the week of the bid submission date.

Q There has been testimony that the -- and I believe some exhibits admitted -- that the bid date

was April 6th.

Does that help you fix the date?

A That's correct.

Q Now, Mr. Voorneveld has testified that he had a conversation with you early that week on April 2nd.

Do you recall that conversation?

Q I recall a conversation in the early part of the week with Al, yes.

Q He testified that he called you the day before a letter dated April 3rd, so could you -- does that help you place the date?

A Yes.

Q What time of day had you spoken with Mr. Mr. Voorneveld, if you can recall?

A That would have been early in the morning.

Q And what did you say to Mr. Voorneveld and what did he say to you?

A Well, as I recall it, Al and I had several conversations over the course of December, and over one thing and another, we had become quite well acquainted as a result of our association, and we passed the time of day and a few remarks about one thing and another, and then Al gave me the amount of Wiedersum's fee for the services.

Q Did you discuss any of the details of the project with Mr. Voorneveld at that time?

A Negative. I merely chided Al a little bit and said that I'd hope they would allow us to make a little money and maybe reduce their fee a little.

Q I'm sorry, I didn't hear you.

A I chided Al a little bit and I said I hoped they would help us make a little money and reduct their fee a little.

Q Had Mr. Voorneveld been your prime contact with respect to the South Carolina project at Wiedersum?

A Not as far as the South Carolina project was concerned, no.

Q Who would that be?

A The contact of National Homes with the Wiedersum organization was Mr. Laverty.

Q Had you seen theplans that you have in front of you when you spoke with Mr. Voorneveld?

A They were laying on my plan table, yes.

Q Did you discuss those with him?

A Negative.

Q Is there any reason that you didn't?

A Probably because of the fact I hadn't reviewed them as yet.

Q Did there come a time when you did review them?

A Yes.

Q Can you place that time?

A It would have been the early part of the week of the bid, probably the day following -- Tuesday or thereabouts.

Q And after reviewing them, what did you do?

A Well, after I got into them and started reviewing them, I found items that seriously affected the costing.

Q The costing.

What does that mean?

A In other words, determining the final cost in arriving at an accurate final cost.

In other words, making it impossible to secure bona fide accurate subcontracts.

MR. MORRISON: Excuse me, your Honor.

I object to this testimony and move to strike it.

This was the subject matter of my motion at the outset of the case, and I believe Mr. Simmons has just gone into --

THE COURT: Then I will --

MR. SIMMONS: May I be heard?

THE COURT: Come up to the bench a minute.

(The following occurred at sidebar.)

MR. SIMMONS: Your Honor, Mr. Morrison's motion this morning was based on the fact that we were contending --

THE COURT: I know what it is. I recall the motion. You needn't relate it. I know what the motion is.

MR. SIMMONS: Our answers to interrogatories indicated a number of problems with the plans.

It indicated that the decision was based on the fact that plans didn't arrive in sufficient time, problems with soil conditions, and problems with getting subcontractors.

The problems that Mr. Gleason is talking about now relate to those problems, relate to the a ability to make the corrections in sufficient time to put in a proposal.

They relate to the detailnecessary to enable us to determine -- to obtain bids from our sub-contractors. Those were items mentioned specifically in our response to interrogatories, which I will refer the Court to right now.

THE COURT: All right. Yes, counsel.

What do you say?

MR. MORRISON: Your Honor, he was starting, as I understand it, he was starting to say that he looked at the plans and there was something wrong with them --

THE COURT: He what?

MR. MORRISON: The witness was beginning to say that he looked at the plans and there was something wrong with them, that he couldn't get the price.

And that was the subject of my motion this morning.

The adequacy of those plans just is not at issue in this case.

MR. SIMPSON: Your Honor, it is in issue in this case.

I refer the Court --

THE COURT: I have read all the papers. I don't want this this way.

I know what this case is about so I sustain the plaintiff's objection.

(The following occurred in open Court.)

BY MR. SIMMONS:

Q At the time, Mr. Gleason, that you revieweed the plans that are before you as Exhibit 11, had you obtained bids from all of your contractors and subcontractors?

A Negative.

Q Were you able to obtain bids from your contractors?

A No, sir.

Q Is there any reason why you were unable to obtain bids from your subcontractors?

A Because we didn't have adequate information.

MR. MORRISON: I object to that, your Honor. That is what we have just been through twice.

THE COURT: Sustained.

BY MR. SIMMONS:

Q Now, Mr. Gleason, how long a period of time was needed to renew the plans prior to the submission of a proposal -- prior to the proposal date?

A How long a time would be required to review the plans before they were submitted to the Government?

Q Yes. Before the submission of the proposal.

A To review the plans to insure that they were in accordance with the criteria would take a person familiar with the plans and the criteria minimum of six

to seven hours.

Q How long?

A Six to seven hours.

Q Six to seven hours?

A Six to seven hours. Say a day's time.

Q So you only needed the plans in your hands one day prior to the submission?

A To insure that they met with the criteria.

Q Well, was that the only thing that had to be done prior to its submission, checking to see whether it met with the criteria?

A Absolutely not. The main purpose of the plans is to determine your final cost.

The final cost of the bid, of which is the bid you are going to submit, that is the purpose.

Q To do the things that had to be done, to enable you to put in a proposal, how long would the plans have to have been in your hands prior to the submission date?

A As stated earlier, our request had been two weeks.

Q Well, now, that was your request. But would it have been possible, in your opinion, to have done it in less time?

A There would be absolutely no way possible to prepare and secure bona fide subcontract bids in less than a week minimum to 10 days.

Q So you needed that amount of time to do what again?

A To secure the subcontractors bids, the bona fide subcontractors bid, based upon the plans that were going to be installed.

Q So you needed the plans a week in advance?

A A minimum of a week.

Q If you had the plans in your hands a week in advance, would you have then been able to have obtained confirmations or bids from all of the contractors that you needed?

A Itwould have been extremely tight.

Q Could any problems have occurred if you had had them eight days before, would you have been automatically able to obtain everything that you needed?

A The less time we had the more probability we would have had of plugging figures, as they say, and this is where the risk -- the potential loss a contractor may inquire or suffer on a job.

Q What is it that you need from the final plans in order to get confirmations from your subcontractors?

A You mean specifics?

Q Yes.

Why do you need the final plans?

A So that the subcontractors will know precisely what they are bidding on exactly.

A sewer system. For a utility contractor to give you a bona fide bid for which he will do the job, he must know the depth of the sewers, the size of the sewers.

This is determined by your rim elevations, your inverts of your sewer lines.

Normally it is with profile sheets, but it is data that a utility contractor must have to establish cost.

Q Where does he get that data?

A From the site development plans.

Q Are site development plans part of the plans that you have in front of you?

A Site development plans are a part of the plans.

Q What about with respect to the buildings, you referred to site development, does that include the structures that go up on the site?

A Negative. The site development plans is

the nomenclature for plans that are required or needed or supplied for the development of the land itself to make it ready for the structure to be built upon it.

Q Well, now, what would you have subcontractors do, subcontractors to do what?

A On the site development?

Q Yes.

A The first thing you have to have is the clearing and the grubbing, the mass moving of the earth, the grading, the development of the compaction, the streets.

That would not go in ahead of the sanitary sewers, your storm drains, your water, your gras distribution system, et cetera.

All of this stuff goes in a very orderly sequence of construction.

The first operation to take place is the grading and the grubbing, and the mass excavation to get it down reasonably close to what is going to be the finished grade, at which time your utility contractors would move in, your sanitary contractor, because of the fact it is the deepest utility.

Then your storm drain contractor, which is the next deepest, followed up with your water, your

telephone lines, your electric lines, your gas lines and et cetera.

Q All right.

Now, the plans would come in and what would you do? How would you obtain a bid from the subcontractors, physically?

A We would submit the plans and the specification to the subcontractors that were doing that type of work.

As I stated earlier, we would secure a minimum of three bids from each subcontractor -- each type of subcontractor; in other words, from three different subcontractors.

This way we would insure that we were getting the most reliable, if not the best price, in the area.

Q Now, when you reviewed the plans, you said in the early part of the week, was there enough time to enable you to do what you had to do in order to put in a proposal?

A Absolutely not.

Q Why did you not have enough time?

A The reason --

Q What specific problems were posed for you by the lack of time?

A For the main and simple reason we didn't have the plans to submit to the subcontractors to get the prices that were required.

National Homes Construction Corp. are erectors, they are the -- what would be classed the general contractors in this particular case supplying or using prefabricated buildings, of which we would be the erectors of.

We would sub out the concrete work, the underground utilities, the site improvements, the streets, the paving, the landscaping, the lawns, the drywall, the concrete work, et cetera.

Q Now, you said the subcontractors would pull certain information off of the plans.

A That is very true.

Q Now, you had an opportunity to review those plans. Was the information called for on them?

A Pardon?

Q The information called for to enable you to give information to your subcontractors, was it on those plans?

A Negative.

MR. MORRISON: I object and move to strike.

THE COURT: Yes. Sustained.

BY MR. SIMMONS:

Q Now, Mr. Gleason, whenever there is a change in a set of plans, something that has to be changed, what is the process; what is done when you note a needed revision on plans that have been submitted to you by an architect?

A If the plans that are considered to be or dated uniformly with one date, which would indicate the final plans are revised in any way, shape, form or manner, the revision date is to be shown very clearly on each sheet that is revised.

Q Well, what I'm talking about is where you note, where you have a problem with plans that are submitted to you, what do you do?

It either doesn't have information that you need or you think that it is inaccurate, what is done, what is the procedure?

A The first thing I would do is notify the architect or the engineer of the lack of information.

Q Assume that it is something that has to be supplied to the plans, who does what then, who puts it on?

A The architect or the engineer is responsible for, and the only one that can make changes to the plans.

Q What is done then?

A He'll make the changes to the tracings or the mylars or -- whichever he's using, will mark his revision date normally immediately above the title block or as a part of the title block.

Q Would the plans then be sent back to you?

A Yes, you would get the prints, sometimes full sets, or you would get supplementary sets to insert in a set of plans.

Q How much time is generally required to make a revision of this sort?

A It would depend entirely on the magnitude of the revision.

Q What would then be done when the change had been made, would that be it? Would you be ready to go at that point or might there be other things that had to be done with respect to the revision?

A You mean the revision that had been requested or made --

Q It had been made?

A It is very conceivably -- conceivable that at a later date that revision would have to be further added, too.

Q Were any changes required in the plans

that you see in front of you?

MR. MORRISON: Objection.

Your Honor, same objection.

MR. SIMMONS: Your Honor, I think the --

THE COURT: Same ruling.

MR. MORRISON: I didn't hear your Honor.

THE COURT: I sustained the objection.

MR. MORRISON: Thank you.

BY MR. SIMMONS:

Q I believe you testified that you had a conversation with Mr. Laverty; is that right?

A That's correct.

Q What did Mr. Laverty say to you in that conversation?

A When discrepencies were brought to his attention on the early part of the bid week, at which time --

MR. MORRISON: Objection.

I don't know what date he's referring to. He said a conversation.

Q On what date did you speak with Mr. Laverty?

A The early part of the bid week. It would probably be on a Tuesday.

Whatever the date, it would be on a Tuesday.

Q What did Mr. Laverty say to you?

A He was advised ot the discrepancies, the changes that would have to be --

Q I asked you what he said to you.

A He said that he would make the --

MR. MORRISON: Please. I have an objection. I ask that that answer be stricken on the same grounds as before.

THE COURT: Same ruling.

Q Now, Mr. Gleason, where was Mike Bolka during this period of time?

A Mike Bolka was in South Carolina at the job site.

Q What was he doing there?

A He was attempting to secure final prices.

Q Do you know when he went to South Carolina, when he left to go?

A He left the office to be in South Carolina on the Monday morning of the bid week.

Q And what did he have with him in South Carolina, if you know?

A He had the plans that were available to him when he left the office on Friday afternoon.

Q Were those the plans that you have in front

of you?

A These hadn't arrived at that time yet, no.

Q Would these have been the plans that you referred to that Mr. Payne brought back from the meeting on March 6th?

A Negative. These would not have been the plans.

Q I'm not talking about those plans, the plans that Mr. --

A Were preliminary plans.

Q The plans that Mr. Bolka had, would they have been the plans that Mr. Payne brought back?

A They would have been the preliminary plans.

Q What would Mr. Bolka have been doing?

A He would have been trying to secure prices so that we could put the bid together.

Q Were the plans that he had, did he have sufficient information to determine -- to get firm commitments?

A Negative.

Q So what was he trying to do then?

A Get unit prices.

Q What does that mean "unit prices"?

A In other words, he was trying to secure

unit prices.

The only way that we had then to do it would be based on, again, going back to sanitary sewers, that manholes in all areas will normally -- or will be paid for in accordance with a two-foot margin, two to six, two to four, four to six, six to eight, eight to ten, et cetera, and the manholes, as well as an eight-inch line or a 10-inch line or a 12-inch line will vary in price by the depth of the sewer line.

So this is what he was trying to secure down there. Not having adequate information to secure a bona fide bid from a utility contractor, he was securing prices, unit prices, in other words, the utility contractor will say, "I am paid X number of dollars for a manhole at the varying depths. I am paid for an eight-inch line, six-inch line, for laterals, for cleanouts, et cetera."

Q And he was determining the prices that were being quoted at these -- under these different conditions, sort of bracketing the --

A Correct. He would feed back the information of the prevailing prices in the area.

Q He was feeding this information back to whom?

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A Back to the Lafayette office to the estimating department.

Q Did you have any conversations with him?

A Yes. He was complaining daily from the time he got down there to the fact that he didn't have the information, it was not on the preliminary plan, to insure him getting prices that could be considered bondable or prices that would be considered as bona fide.

Q Did you ever get that information in order to get these confirmations or those quotes?

A Negative. Not in time, in any event, to take and prepare a bid.

Q Now, did you have any conversations with Mr. Bolka while he was in South Carolina?

A Did I?

Q Yes.

A Yes.

Q Can you recall those conversations?

A I think it was more -- I cannot recall it word for word. It was more of a case of me relaying my experience to him as to how he could fill in and secure some of these prices.

In other words, telling him, "Look, ask a subcontractor," again getting back to the sewers, "ask him

about what he's getting for transite waterline or what he's getting for ductal waterline."

In other words, I was trying to feed him information so that he in turn could go out and ask intelligent questions and get us intelligent quotes.

Q Did you have any of those conversations with Mr. Bolka after you had reviewed the plans that are in front of you?

A After I had reviewed the plans in front of me, and after I had talked to Mr. Laverty, very frankly, the time being such as itwas, there was no -- there was no purpose of having any other conversations with him.

Q Is it a fact that you didn't have any more conversations with Mr. Bolka after you reviewed the other plans or while you were reviewing them?

A I had a conversation with Mr. Bolka on a Thursday afternoon at which time I directed him to come back to the Lafayette office and be prepared to proceed immediately to New York.

Q Between that time and the time that you reviewed the plans that you see -- that you have in front of you, did you have any other conversations with Mr. Bolka?

A Other than to tell him that I didn't have the information that would insure him going out and getting

bids.

Q You had those plans in front of you, did you not?

A That's correct.

Q Why didn't you read the information off of the plans to him?

A Because it was not there.

MR. MORRISON: I object.

Your Honor, this is about the fifth time Mr. Simmons has tried to do this.

THE COURT: Sustained.

Q Who actually fills out the bid documents?

A The contractor submitting the bid.

Q No, who at National would have filled out the bid documents?

A The bid documents, other than the final price, which is filled out by myself, the bid documents were filled out by Mr. Dooley.

Q Did Mr. Dooley actually fill out bid documents in this case, do you know?

A He filled out everything but the final price.

MR. SIMMONS: Might I pull the table over, your Honor, and allow the witness to spread the documents out?

THE COURT: Yes. Surely.

Q Mr. Gleason, the document immediately in front of you is Exhibit 11, the plans that bear the date March 30th on all the sheets; is that not correct?

A Yes.

Q And the document on the far end of the table on top of that is Exhibit 16, which does bear sheets with certain revision dates on them; is that not correct?

A Yes, certain sheets do have revisions.

Q Are there any differences between Exhibit 11 and Exhibit 16?

A I have reviewed them and there are differences, yes.

Q Now, Mr. Voorneveld testified yesterday that the revisions essentially were minor, he did mention some specifically, he mentioned revisions on -- the first revision being on Page 5.

What is the practice -- would you turn to S.K.O. 5, please.

A Yes.

Q It also bears a date, Exhibit 16 also bears a date, March 30th, but does it not bear a revision date.

A That's correct.

Q Would you read that?

A That is revised, 4th of Aprl, 1973, the draftsman's initials S.M.

Q Now, what is the practice in the industry with respect to -- if there is indeed a practice, with respect to noting revisions on plans?

A As I stated earlier, whenever a plan or a tracing is revised, once it goes into the final stage, which the 30th of March indicates that it is the final stage, the mere fact that it appears on all of the prcints, when that sheet is revised, then a revision date or stamp must appear on that sheet to indicate that the sheet has been revised and not a per original.

Q Now, you say, "must appear on it."

What do you mean by "must"?

A That anybody that picks that up knows that there has been a change from the original sheet.

Q Is that requirement merely a standard in the industry or is it found some place?

A No, that is a standard thing in the industry, and there has been many a lawsuit because plans have been turned out where they were not marked revised and they were revised.

Q I ask you to examine Exhibit 16, each of the pages prior to S.K.O. 5, and I ask you whether any of those pages bear any sort of marks indicating a revision.

I want you to look at Exhibit 16.

A Drawing No. S.K.O.O. does not indicate a revision.

Q Did you find any revisions on that page?

A That I didn't.

Q Turn to the next page?

A Yes.

Q What is the number of that page?

A That is S.K.O. 1.

Q Did you find any revisions -- do you find any marks indicating revision on that change?

A There are no marks.

Q Did you find any revisions on that page?

A I don't recall finding any on this page.

Q Turn to the next page.

A Yes.

Q What are the numbers?

A S.K.O. 2, both of them are S.K.O. 2.

Q Is there any indication of revisions on that page?

A The upper set here, which is the revised set, shows no indication of a revision having been made.

Q Are there any differences, are there differences between the sheets?

A Yes.

Q What are they?

A There has been a seven space parking area added in the upper northeast corner.

There has geen an eight space parking area added in the lower southeast corner.

There has been anadditional top lot added.

The grade has been changed of the project itself and the grade of the floor elevations had been changed.

Q What does that mean?

A They have been lowered. It would mean that in this particular case, from the copo indicated here, there would be additional dirt that would have to be moved.

There is also a -- there is an addition of one sorm drain manhole and approximately 170 feet of storm drain of which the size is not indicated.

Q Are there any other changes?

A On this particular page? I don't see any.

Q Well, now, Mr. Voorneveld testified with respect to some of the other pages that bore changes, that those changes were essentially very minor.

Are the changes shown before you minor changes?

A These would be considered very significant changes. Very significant.

Q Considered significant by whom?

A Pardon?

Q Considered significant by whom?

A By any contractor that was under contract to do this job, number one.

They would be very significant in the cost of the total job itself, number two.

Q Would they have been significant to National?

A Very definitely.

Q Would they have been significant to a subcontractor?

A They would have been significant to him, to a subcontractor, and would have undoubtedly been grounds for suit against the --

MR. MORRISON: I object to that. That is totally unreponsive.

THE COUNT: Strike it out.

Q I believe you were talking about elevations. Elevations of what again?

A Of the general grade itself, have been changed, have been lowered in some cases.

It is raised in the others. The floor grades, this building here, for example, is 34.0, this building here is 35.0.

Q What did that mean? Do they raise the building, lower the ground? What is happening?

A In this particular instance, they have lowered the grade around the building and as a result, they have lowered the grade of the building itself.

Q Are there any other changes?

I believe you said that you didn't see any more?

A There is the storm drain down here.

Q Are there any others?

A Not that I see now. No.

Q And again, is there any indication of a revision on this page?

A No revision date on it.

Q Turn to the next page, please.

What number does that bear?

A This is S.K.O. 3. This is S.K.O. 3.

Q Does S.K.O. 3 on Exhibit 16 have any indication of revisions having been made?

A There is no revision date indicated.

Q What does that indicate to you?

A There would have been no revisions to that.

Q Are there any differences?

A Yes.

Q What are they?

A One, two, three, four, five, six, seven, eight -- there is an eight-car parking lot added on the east side.

There has been a tie area and a playground added on the southeast side.

There has been another playground added on the south side. There has been another parking lot consisting of six spaces added on the southeast side.

Q Are there any other changes?

A The same condition is with the general grade and the floor.

Q What does that mean?

A That the grades again have been altered.

Q And in what respects?

A Pardon.

Q In what respect, the ground has been lowered

or raised?

A The grade itself has been lowered.

Q When you say "grade," what do you mean by the grade?

A Dirt has been moved from one portion to another resulting in the finished grade being lower, in this instance here, in some cases a foot.

Q Mr. Voorneveld didn't testify about this page, but he again referred to some of these revisions as being minor.

Are those revisions minor?

A These revisions aren't minor.

Q Now, to whom would they have had significance, to you, to National?

A To the general contractor and the subcontractor. They would have affected the price.

MR. MORRISON: Excuse me.

Your Honor, I intend to make a motion regarding this portion of this witness' testimony, but I'd like to -- I would prefer to have a very brief voir dire to establish the predicate for that motion.

THE COURT: You may have it.

MR. SIMMONS: At this time, your Honor?

Or shall I continue?

THE COURT: Well, what do you suggest?

MR. MORRISON: I wanted to do it, it would take a couple of minutes. I'd like to do it now.

THE COURT: It might be in order now.

MR. MORRISON: Before we go any further with this line of questioning.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. MORRISON:

Q Mr. Gleason, when did you go through these two sets of drawings?

A I have gone through them at least twice. The latest time was last evening.

Q And when before then did you go through them?

A Back on the -- at the time of the bid.

Q And when specifically did you go through them?

A The bid was on April 6th, as has been testified to.

Q And you went through them on April 6th?

A I'm not positive I went through them on April 6th, because it would depend on when they arrived

in our office.

Q You went through both sets of drawings?

A I have for a fact.

Q And you compared them page for page?

A Pardon?

Q And you compared them page for page?

A Have I compared them --

Q Have you compared them page for page?

A I have not, as I stated, compared them page for page until last evening.

Q Last night was the first time you did that?

A Lhat's correct. Page for page, that's correct.

Q And you did that with these very drawings which have been marked as exhibits --

A I did that with these very drawings here.

Q -- as exhibits in this Courtroom?

A Yes.

MR. MORRISON: Your Honor, I move to strike the witness' testimony regarding the comparison of the drawings.

The only obvious purpose that it would be offered for would be to show that there is somehow something wrong with the drawings we submitted and

that is the very issue that we have already moved on.

The witness has just admitted he did this comparison last night, and that is the whole point of the motion that I made earlier on.

MR. SIMMONS: May I be heard?

Mr. Voornefeld testified on direct examination yesterday, I believe, that the plans, Exhibit 16, were substantially similar to Exhibit 11. That was his testimony, that any revisions made were minor.

We didn't introduce this evidence, Mr. Morrison did. And having opened the door, your Honor, I submit that this testimony now is quite proper.

It bears directly on evidence submitted in connection with plaintiff's case in chief.

MR. MORRISON: There are two possible reasons. If he is saying that he is introducing this evidence solely to impeach Mr. Voorneveld's testimony, that might perhaps be permissible.

But the obvious import of this testimony is more than that. He's trying to use it to show that there is something wrong with these plans.

That is what I am objecting to.

MR. SIMMONS: I think that there may well, your Honor, be two prongs to it, but certainly the fact that this evidence was produced by plaintiff in its case in chief, for whatever purpose beyond, but the fact that it was produced in connection with the plaintiff's case in chief I submit is -- it is quite proper now to have this evidence come in.

THE COURT: Have you any answer to that?

MR. MORRISON: I think if he wants to bring it in solely for purposes of impeaching Mr. Voorneveld, he might be able to do so if the Jury is instructed that that is the only purpose, bu it cannot be introduced for any other purpose.

MR. SIMMONS: Your Honor, Mr. Voorneveld didn't merely testify.

These documents have been admitted in evidence. The import of the testimony concerning these documents is that they are similar.

The documents are in evidence. I submit the fact that the documents are in evidence, and that we didn't merely have testimony concerning the documents, but the documents are here, allows this

testimony to come in.

I'm not talking about impeaching Mr. Voorneveld's testimony about any one of a number of other things, X, Y and Z, by the use of prior inconsistent statements or his reputation for veracity or whatever-have-you, your Honor.

Those exhibits are in evidence.

MR. MORRISON: They are only in evidence for the purpose of showing that plans were submitted, that's the only reason we put them in.

THE COURT: That's true.

MR. MORRISON: He's the one that did the cross-examination going through page by page. We didn't do that.

THE COURT: That's true.

MR. MORRISON: We put them in only to show the plans were completed and sent, and that two different plans were sent.

THE COURT: What is your position now?

MR. MORRISON: I think he's obviously entitled to try to impeach a witness' credibility, if that is what he's doing.

But I think he can only do it if the Jury is instructed that the only purpose of this evidence

is for impeachment.

It cannot be used to affect on the sufficiency of the plans because that is not in issue in this case.

THE COURT: That is true.

Now, I have been through this, counselor. This is not new.

You may disagree, but that is my ruling.

You may proceed.

MR. SIMMONS: May I proceed with my examination with this witness?

THE COURT: You may proceed, counselor. I pass on objections, You are free to proceed until an objection is made.

MR. SIMMONS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SIMMONS (Cont'd):

Q Mr. Gleason, what page are we on?

A Page S.K.O. 3.

Q That page, does it indicate any revisions?

A No revisions.

Q Now, are there any other revisions on that page other than the ones that you have referred to?

A The parking lots and the change of grade.

Q Excuse me.

A The parking lots have been added and the grades have been changed.

Q I believe those are matters that you testified to before Mr. Morrison's motion.

A That's correct.

Q Are there any others?

A Negative.

Q Would you turn to the next page?

A S.K.O. 4.

Q Is there any indication on that page that the plans have been changed?

A There is no indication.

Q And are there any differences between the two sheets?

A There have been two parking areas of seven bays added.

Q Seven bays. What does that mean?

A Seven parking bays.

Q What is that?

A A parking bay being at least nine feet if not 10 feet wide by 20 feet deep.

Q Are there any other changes? For instance, I call your attention to the upper --

A The grade has been changed again.

Q I call your attention to the upper left-hand corner of Exhibit 16 and ask you to compare that with Exhibit 11.

What does that indicate?

A A top lot has been deleted from this one up here.

Q Are there any other differences that you note?

A Again we have some grade changes.

Q Now, what sort of grade changes, how extensive are they?

A Approximately a foot.

Q Over how large an area?

A In this particular one here, it encompasses an area of approximately 200 feet by 150 square feet.

Q Would those changes be the sort --

A The parking lots would be substantial.

Q The others might be labeled minor?

A On that grading it would be classified minor, if no more than what is there.

Q Turn to the next page, please.

A Yes.

Q Yes.

A S.K.O. 5.

Q Does that indicate any changes?

A This indicates a revision, yes. Dated 4 April '73.

Q Mr. Gleason, Mr. Voorneveld's testimony is in evidence. It will speak for itself.

My recollection is a reference to a down spout. Do you see a down spout, the addition of a down spout?

A There are squares on the lower right-hand corner of each building which appear to be piers for carports.

Q Are piers for carports? Is that the same thing as a down spout?

A That is a negative.

Q What is a down spout?

A A down spout is a stopper or a tube, pipe, if you will. It carries off the water off the roof.

Q And what is the --

A It appears to support a post or piling or structure above it, that's what I had reference to.

Q Do you note any other additional changes on that page of the exhibit?

A On the five bedroom unit, the A type unit --

Q I didn't hear you.

A On the A type unit, which is a five-bedroom unit, there have been batwing doors added to the arch between the dining room and the kitchen.

Q Before you go on --

MR. SIMMONS: I think the record should show that this page of the exhibit has three plans listed; A, five-bedroom unit; B, four-bedroom unit; and C, two-bedroom unit.

Q You were testifying concerning A.

A A: The five-bedroom unit. Batwing doors between the kitchen and the dining room --

Q What are batwing doors?

A That is a slang for cafe doors.

Normally they are, as you see in cafes, they are a foot, 15 inches off the floor, they may come up eye height or they may come up chest height.

Q Are there any other changes?

A There is a stub wall on each side of the -- on the wall adjacent to the utility room and on the rear exterior wall between the living room and dining room to denote separation between the two.

Q And that change isn't down --

A It is not on Exhibit 11.

Q Are there any other differences that you

note on A?

A Not on A, the five-bedroom unit.

Q Is A merely one unit out of all of the units that would be constructed?

A There would be a certain -- there would be a certain number of them. There would be a series of them.

Q So the addition of the walls and the doors that you have indicated would be multiplied for the number of units of that type?

A That's correct.

Q That would be part of the project; is that right?

A That's correct.

Q Are you finished with the A?

A That's correct.

Q With respect to the B.

A The B units has the same modifications made to it, the batwing doors from the kitchen to the dining room, it has the stub walls, floor to ceiling, protruding out approximately two feet on the -- from the utility wall and the exterior rear wall between the dining room and the living room to denote a separation between them.

Q Are there any other changes?

A Negative.

Q The next set is C.

A Two-bedroom unit. That is the C unit.

There are batwing doors between the family room and the dining room.

On the second floor plan and on the first floor plan of the two bedroom unit, they are there.

There is a wood handrail been added at the top of the stairs on the landing.

Q Now, again, the changes for B and C, are they more than for one unit each?

A They would be for all of the -- these are typical floor plans for a four-bedroom, a two-bedroom and a five-bedroom, and it would be the same -- the same changes would be incorporated in every four bedroom built, every five bedroom built, or two bedroom built.

Q Are those the only changes that you note?

A That's the only changes I note.

Q And in addition to the down spout and support?

A Correct.

Q Mr. Voorneveld did testify that the changes on that page were essentially minor, minor changes.

Is that the case?

A These would prove to be quite costly on --

over a unit of this size.

Q Quite costly to whom?

A To National Homes Construction Corp. or the general contractor, which we would be.

Q I ask you to refer on to the next drawing.

A Yes. Sheets S.K.O. 6 indicates that it was revised April 4, 1975.

Q Again, Mr. Voorneveld's testimony will speak for itself.

I believe it was, the changes are minor. There is a possible difference in shading.

Have you noted any differences?

A Yes, there are changes in the -- in this plan has been revised as opposed to this.

Q You are referring to now changes in Exhibit 16?

A Right.

Q What are the changes that you have noted?

A On the front elevation of the two-bedroom unit --

Q Would you explain for the members of the Jury what you mean by the front elevation?

A The easiest way to explain that is it is a rendering or a picture of what the building will appear as or look like when it is erected.

Q Does that mean if there are changes on the front elevation, that it is a change in the front of the house?

A That's correct.

Q You were going to say?

A On Exhibit 16, the roof above the second floor stairwell has been closed in. It was open on the initial. The windows have been relocated on the first and second floor to comply with the floor plan.

Q What does that mean, to comply with the floor plan?

A The way they are showing -- tney show it on No. 11, would indicate that the windows were approximately one foot from the corner of the room when in reality they are approximately the center of the room, which would make them about four, four and a half foot away from the corner.

Q Let's talk about, you said that that is the way they are shown on Exhibit 11?

A Rignt.

Q You said there is a difference between the way they are shown on the elevation and on the floor plan.

Where's the floor plan?

A The floor plan would be back on S.K.O. 5.

Q So the floor plan shows -- the floor plan of Exhibit 11 shows the windows how far from the corner?

A The floor plan shows the windows to be -- they are not dimensioned. They appear to be approximately a foot from the corner.

Q The elevation on the next exhibit shows the windows being where?

A I beg your pardon. The windows on the original submission No. 11 on the two-bedroom plan were compatible or in compliance with the windows on the first floor.

On the revised plan, Exhibit No. 16, the windows had been moved to indicate that they are now approximately five feet from the corner.

Q Does that mean that on one plan or the other the floor plan doesn't match what the plan shows the outside of the house to be?

A That's correct.

Q Are there any other differences?

A I have mentioned the roof.

Q The number there, sir, is S.K.O. 6?

A Yes.

Q Would you swing to the next one?

A Yes.

Q Mr. Voorneveld's testimony is in the record on this. I believe he referred to an insulation joint.

A Insulation.

Q Do you see that?

A There is an expansion joint between the slab and the exterior walls.

Q Will you explain to me the difference that you see?

A The --

MR. MORRISON: Your Honor, I have been very patient through this, but I think that it is obvious that Mr. Simmons intends to go on forever on this.

I think whatever value this testimony may have in terms of impeachment is far exceeded by the fact that it oversteps the previous ruling which this Court has made.

I move to terminate this aspect of the examination.

THE COURT: I think we have gone along substantially on this matter, so we ought to conclude with it.

MR. MORRISON: I would also request that the Jury be instructed that the only relevance of

this line of questioning is as it affects Mr. Voorneveld's credibility and that the sufficiency of the plans is not at issue in this litigation.

THE COURT: That is true. I so instruct the Jury.

It is not in issue.

MR. SIMMONS: Your Honor, does that mean that I cannot proceed with the subsequent sheets --

THE COURT: I haven't stopped you. I only pass on objections, as I say.

BY MR. SIMMONS:

Q Mr. Gleason, would you turn to Exhibit -- to S.K.O. 7 -- we are at S.K.O. 7; is that right?

A That's correct.

Q Do you see any other changes on that page?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q Would you turn to the next page.

What is that identified as?

A S.K. O. 8.

Q Are revisions shown on that page?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q And the next page?

A S.K.O. 9. No revisions shown.

Q And did you find any differences --

MR. MORRISON: Objection.

MR. SIMMONS: Your Honor, there is objection.

THE COURT: What is that?

MR. SIMMONS: Mr. Morrison has objected.

THE COURT: Have you objected to it?

MR. MORRISON: Yes.

THE COURT: Sustained. They are not in issue.

BY MR. SIMMONS:

Q Would you turn to the next page?

A Yes.

Q What is the number on that page?

A S.K. 10.

Q S.K. 10?

A Yes.

Q Are any revisions shown?

A No revisions shown.

MR. MORRISON: Objection.

Please, Mr. Gleason, if there is an objection, you should not answer --

MR. SIMMONS: Please don't speak to the witness,

let the Court do that.

THE COURT: Sustained.

MR. SIMMONS: I didn't hear the ruling, your Honor. I'm sorry.

THE COURT: Sustained.

BY MR. SIMMONS:

Q And the next page, Mr. Gleason?

A S.K. 11.

Q And what is that -- what does S.K. 11 on Exhibit 16 indicate in terms of revisions?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q And the next page is?

A S.K. 12.

Q And what is shown there in terms of revisions on Exhibit 16?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q And the next page, sir?

A S.K. 13.

Q And what is shown there on Exhibit 16 as to revisions?

MR. MORRISON: Objection.

THE COURT: Sustained. We are going far

beyond this. It is not an issue in this case.

MR. SIMMONS: Your Honor, I don't want to take up the time of the Court, but I would propose to have testimony with respect to each of those sheets.

THE COURT: You can go on as far as you like, and I will pass on objections. That is my function.

MR. SIMMONS: All right.

BY MR. SIMMONS:

Q The next sheet, sir.

A S. K. 13.

Q And are there any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q And the next page.

A S. K. 14.

Q Are there any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

You are going along in the same way on an issue which is not in the case.

Q The next page.

A S. K. 15.

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Q Any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

MR. SIMMONS: Your Honor sustained that?

THE COURT: Yes.

Q The next page?

A S. K. 16.

Q Any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

We will take a recess of 10 minutes at this time, members of the Jury.

(Recess taken.)

(After recess. Jury present.)

MR. SIMMONS: May we approach the bench?

THE COURT: Certainly.

(The following occurred at side bar.)

MR. SIMMONS: Your Honor, the testimony submitted by the plaintiff in this case indicates that final plans were submitted on the 5th of April, one day before the bid date.

The essence of your defense is that plans were not submitted in time.

Mr. Morrison concedes that the essence is

that they weren't submitted in time. That is separate and apart from the question of sufficiency, that there was not enough time to do what had to be done.

THE COURT: All right.

I have your point on that. What do you say about that?

MR. MORRISON: He's just rehashing the same thing. We say the final plans were submitted on the 30th.

MR. SIMMONS: These plans -- Mr. Gleason's testimony as to these extensive changes, these changes that Mr. Voornefeld indicated were minor, shows that final plans were not submitted on the 30th and they were submitted on the 5th, and they were too late.

That's the whole purpose of this line of questioning.

MR. MORRISON: Your purpose is to show that what was submitted on the 30th were not sufficient as final plans, and that is not in issue.

MR. SIMMONS: That is not the issue.

Mr. Morrison's introduction of Exhibit 16 as the final submission shows what the final plans

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are. If there were extensive changes made, changes made on pages where there was no indication that changes were made, it would have been impossible, and indeed, it was impossible one day before the submission --

THE COURT: I have your point on that.

MR. MORRISON: He should have pled that in his answer.

THE COURT: The ruling I made originally is, it is not an issue that was raised in the pleadings. You do not seem to understand it, and I have mentioned that to you two or three times.

You may disagree with me but --

MR. SIMMONS: There was no allegation as to the date in the pleadings.

THE COURT: I have ruled on it. You may disagree on it. That is my ruling.

I confirm the ruling.

(The following occurred in open Court.)

BY MR. SIMMONS:

Q Mr. Gleason, would you approach the exhibits, 11 and 16, please.

Would you turn to S. K. 17; are any revisions shown?

A Revisions shown, yes.

MR. MORRISON: Objection.

THE COURT: Sustained.

BY MR. SIMMONS:

Q Would you turn to S. K. 18?

A Yes.

Q Are any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

We are just going over and over it again, and I have ruled against it. It is not an issue in the case.

Proceed to some other item other than that.

MR. SIMMONS: Your Honor, I have no more sheets, your Honor, that I would like to offer into evidence -- that I would like to refer to, et testimony on.

THE COURT: I ruled.

MR. SIMMONS: I don't want to belabor the point --

THE COURT: I have ruled, but you don't seem to accept my rulings.

MR. SIMMONS: I have two more, your Honor.

BY MR. SIMMONS:

Q Will you turn to S. K. 19.

A Yes.

Q Are there any revisions shown?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q And S. K. 20?

MR. MORRISON: Objection.

THE COURT: Sustained.

Q Now, Mr. Gleason, I asked you previously about commitments that were made, if any commitments were made, at the February 26th meeting with Mr. Voorneveld and others at Wiedersum.

I ask you now, at any point in time, did you make a commitment to anyone at Wiedersum that a proposal would be submitted if they drafted plans?

A Absolutely not.

Q Did you authorize anyone to make such a commitment on behalf of National?

A Absolutely not.

Q Do you know of anyone making such a commitment, be it with your authorization or not?

MR. MORRISON: I object. He just said he didn't authorize anybody to do that.

MR. SIMMONS: I heard that.

BY MR. SIMMONS:

Q I'm asking whether he heard or knows of anybody making such a commitment, whether or not it is with his authorization.

A I know of no one having made the commitment.

Q When was the decision made, sir, not to put in a bid?

A In keeping with out normal policy of having the bid completed and ready to go to bond, it would be -- it would have been turned off as a going project two nights before the bid, which would make it the 4th.

Q And why was the decision made not to put in a proposal?

A Because we could not get the cost together to which we would dare put a bid on.

Q You could not get the cost together for purposes of what?

A To submit a bid.

Q What do you mean by you could not get the costs together?

A We didn't have the information to secure --

MR. MORRISON: I object. Same objection as before.

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THE COURT: What do you say, counselor?

MR. SIMMONS: He's objecting, the same as before, your Honor.

THE COURT: Same ruling.

BY MR. SIMMONS:

Q Now, what is a bid bond, Mr. Gleason?

A At the time you submit a bond to the --

Q I didn't hear you.

A When you submit a bid to the military, it must be accompanied by a bid bond.

The criteria will set forth the amount of that bid bond.

fls.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. SIMMONS: (Cont'd.)

Q And what does that bond provide?

A The bond is posted for the purpose that if you are awarded the contract, then you must proceed with that contract. Upon failure to do so you will forfeit the amount of your bid bond or you will forfeit that portion of the bid bond up to the next low bidder.

Q Would a bid bond have been required in this case?

A A bid bond was required on it.

Q And who was to take out that bid bond if a proposal was submitted?

A The general contractor would have taken out the bid bond.

Q And that would have been National?

A That would have been National Homes Construction Corporation.

MR. SIMMONS: I have no further questions, your Honor, of this witness.

CROSS-EXAMINATION

BY MR. MORRISON:

Q Mr. Gleason, where do you reside?

A St. Petersburg, Florida.

Q How long have you lived there?

A Two years.

Q How long have you been in the New York vicinity?

A Since last Sunday.

Q Last Sunday?

A This past Sunday.

Q Where are you staying?

A At the hotel over on 80 and Park.

Q Is anybody here on this trip with you?

A Negative.

Q How did you come to New York?

A Flew in.

Q You flew in?

A Yes.

Q Who paid for the cost of the air fare?

A My counsel.

Q Your counsel?

A Yes.

Q Who is paying for the cost of the hotel from last Saturday night?

A Counsel, I assume. It was not last Saturday. I didn't arrive until Sunday.

Q I'm sorry, Sunday. Is it your plan to remain

here until the termination of this case?

A Negative.

Q Just until your testimony is over?

A That's affirmative.

Q When did you have a change of heart about testifying in this case?

MR. SIMMONS: Objection.

THE COURT: What do you say about that?

Q When did you have a change of heart about your willingness to come and testify.

THE COURT: I will sustain it as to form, counsel.

MR. MORRISON: I'm sorry.

Q Mr. Gleason, do you recall a telephone call between yourself and myself in March of this year?

A I recall a telephone call. I didn't know that it was you.

Q Do you recall someone from Wiedersum's calling you about the case?

A I know somebody representing himself as counsel for Wiedersum called me earlier in the spring.

Q And do you recall that you were asked whether or not you had been contacted by attorneys for National Homes about this case?

A That's absolutely correct.

Q And at that time you had not been contacted?

A That is absolutely correct.

Q Do you recall being asked whether, if you were asked to come to the trial and testify for National Homes, you stated that you would not so come to testify.

A I believe you fill find, and I do not have a record of it, but I believe you will find that at that time I had no intent to testify for anyone.

Q You don't deny that you told whomever you talked to that you were called to come, you would not testify.

A I repeat, I believe I told you, if it were you, that I had no intent to testify for National or for Wiedersum.

Q But you did come and testify.

A I did that.

Q So --

MR. SIMMONS: I object, your Honor. What is the purpose of all of this?

MR. MORRISON: I think I would like to develop this to show a possible bias of the witness.

THE COURT: All right.

MR. SIMMONS: Your Honor, I object to that

last statement and ask that it be stricken.

THE COURT: You asked him why he was questioning him about it. Proceed.

BY MR. MORRISON:

Q The answer is --

A Will you repeat your question, please?

Q Yes. What happened to cause you to change your mind that you weren't going to come and now you did come?

A Only the fact that I think Mr. Harris was possibly more persuasive than you were.

Q Are you saying that I asked you to come and testify?

A You or somebody else. As I recall the conversation that went on the telephone, whoever called me, whether it be you or whether it be the other gentleman that was earlier involved with Wiedersum, when they asked if I was going to appear for National and I said I had no intention to, they asked if I would be kind enough to give a deposition or a statement for Wiedersum, and I stated that if I was not going to appear for National I had no intention to appear for Wiedersum.

Q Isn't it a fact, Mr. Gleason, that you were asked whether, if you were asked to cometo testify at this

trial, you would do so, and your answer was, "I most certainly would not," isn't that a fact?

A I said, and I repeat, I had no intention to. And I had no intention to until last Friday afternoon.

Q That's what I want to find out. What happened last Friday afternoon.

A As I stated, Mr. Simmons was far more persuasive than you were.

Q Is it your testimony that I asked you to come and testify?

A That is my -- not to testify, to make a deposition for Wiedersum.

MR. SIMMONS: Your Honor, I object. He's arguing with the witness at this point.

MR. MORRISON: I will move on.

Q Are you being compensated for your time by the defendant?

A I am not, other than expenses.

Q Have you discussed possible compensation for your time?

A I have not.

Q Did they ask you whether or not you expect to be compensated?

A They have not.

Q Do you expect to be compensated?

A I do not.

Q You are doing this for free?

A I am doing this because my reputation has been slandered by certain statements made in a deposition that was taken from a witness from National.

Q Your reputation was slandered?

A That's correct. In my personal opinion, by the gentleman that gave the -- took the deposition from Mr. Wiedersum's organization.

Q I see. You are not saying that someone at Wiedersum slandered your reputation?

A Definitely not.

Q You are saying someone at National?

A Negative.

Q You are saying the attorney that took the deposition --

A I am saying the attorney that conducted the deposition, in my opinion, slandered my reputation, and that is precisely why I am here.

Q And no other reason?

A That is precisely the reason I am here.

Q I see. And what was it that was said that you feel slandered your reputation?

MR. SIMMONS: Your Honor, I object to all of this.

THE COURT: Overruled.

Q What is it that was said at the deposition that you feel slandered your reputation?

A The implication was made that I had left National as a result of this case.

Q And you feel that that was a slander?

A The implication was made not once but twice, until such time as the ruling was passed that no further would it be discussed.

Q There was a ruling about that at a depostion?

A I think it was agreement between the attorneys.

MR. SIMMONS: Your Honor, I think we are arguing with the witness again. I object.

THE COURT: Overruled.

Q Did someone show you the transcript of these depositions?

A Yes, sir, I read the transcript.

Q You did. There was no ruling by a Judge --

MR. SIMMONS: Objection, your Honor. Mr. Morrison is not testifying. If he wants to get on the stand and testify under oath that is one thing.

MR. MORRISON: That was a leading question.

I am allowed to lead the witness.

MR. SIMMONS: I think you are testifying and I object.

THE COURT: I will agree that he's not testifying.

BY MR. MORRISON:

Q Mr. Gleason, you say that you read these transcripts of the depositions?

A That's correct.

Q Now, is it a fact that there was no Judge present at the deposition?

A I had no opinion on that.

Q Isn't it also a fact that --

MR. SIMMONS: Your Honor, I submit that this is highly improper.

THE COURT: Overruled. This pertains to credibility of a witness. That is normal examination.

Q Isn't it also a fact that there was no ruling by anybody during the deposition regarding questioning?

A I have no opinion on that.

Q Were you involved in the -- in any of the New Jersey projects?

A Yes, sir.

Q Were you involved in both Rutgers and

Richard Stockton?

A Yes, sir.

Q And what were your involvement in those projects?

A Exactly the same capacity.

Q Same as here. You were in charge of it for National Homes Construction Company?

A Yes, sir.

Q Now, when did the two -- when did your company and Wiedersum's decide to go forward with respect to those two projects?

A Negotiations apparently were going on or the discussion was going on just prior to my joining the organization. Because I had been in Lafayette, as I remember, approximately two weeks when I first met Al Voorneveldand Mr. Wiedersum and the other gentlemen were there, in fact we had lunch at the country club. I knew nothing of the negotiations prior to that, and I knew nothing of the negotiations or contracts after that until such time as the New Jersey school authority came.

Q What I want to know is when did -- when was it decided that you were going to go ahead on the two projects that you did go ahead on?

A On the New Jersey school --

Q Yes?

A When we were able to determine a bid, a final bid that we felt -- that we felt we were safe in putting a bid in to do the job.

Q And only then did you decide to go forward?

A That is exactly right.

Q All the time that Wiedersum's were doing work on plans and drawings for these two projects, you say there had been no decision to go forward?

A That's absolutely right.

Q Did you ever communicate that to anyone with Wiedersum?

A No, sir.

Q What about the projects that you didn't go forward on, weren't there some in the New Jersey area that you didn't go forward on?

A Yes. As your people testified to, there were high risers and National is not in the high rise business, they are in the business of constructing what we call low rise or garden type apartments, whereby we can utilize the pre-fabrication components from the parent company.

Q And you decided not to go forward on those projects for that reason?

A Very definitely.

Q And Wiedersum hadn't done any drawings at that time?

A No, this was decided when they submitted the first group.

Q What about the Warminister project, were you involved in that?

A Exactly the same capacity.

Q And you were in charge of that for National Homes?

A Exactly the same capacity.

Q When was it decided in the Warminister project that you would in fact go forward?

A Two days before the bid letting. That was the day that we determined to put the bid in.

Q And it is your contention that National Homes had a right right up to that date to decide not to put in a bid?

A National Homes or any other general contractor has the same right.

MR. MORRISON: I move to strike about any other contractor.

MR. SIMMONS: Your Honor, I think it was in response to a question as to what the witness's contention was. I think it is responsive.

MR. MORRISON: Obviously other contracts with other contractors aren't in issue in this case.

THE COURT: You may proceed.

BY MR. MORRISON:

Q Did you ever consider not putting in a proposal on the Warminister project?

A Pardon?

Q Did you ever consider not putting in a proposal on the Warminister project?

A That's a negative.

Q You never not considered putting in a proposal?

A That's a negative.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. MORRISON: (Cont'd.)

Q So that you never told anyone at Wiedersum on the Warminister project that National might decide not to put in a bid after Wiedersum had done the drawings?

A No, we didn't.

Q And, to your knowledge, nobody else at National told Wiedersum that?

A I'm sure they didn't.

Q You have been shown your letter of January 29th to Mr. Laverty,. You recall that letter, don't you?

A I do.

Q I believe you testified earlier today that at the time you sent that letter, National had not yet decided whether or not to bid on the South Carolina project?

A That is absolutely correct.

Q You didn't tell Mr. Laverty that in your letter, did you?

A Pardon?

Q You didn't tell Mr. Laverty that in your letter, did you?

A Very frankly, I don't think we or anybody else would have felt it was necessary to say that we are not going to give you a commitment of bidding before we

even know what we are going to bid on.

Q But you didn't say in your letter --

A I definitely didn't say that in a letter.

Q What about when you met with Mr. Voorneveld and Mr. Laverty and the other people on February 26th in Valley Stream, New York, did you tell them at that meeting that you were considering not putting in a bid if things didn't go right?

A I didn't tell them that we would not put in a bid nor did I tell them that we would put in a bid.

Q And you didn't tell them that, "We are reserving the right to decide not to put in a bid," after they had done all the work, you didn't tell them that, did you?

A I didn't tell them that. It's a custom in the industry.

MR. MORRISON: I move to strike the last part of the answer.

MR. SIMMONS: I think it is responsive, your Honor.

Q Now, you mentioned a meeting that you had in December, 1972, when you more or less rehashed the Warminister project and what you could do to improve your chances on future projects?

A The latter part of December, yes, just prior to Christmas.

Q Now, at that meeting did you say that you would not make any decisions on future projects until after you saw Wiedersum's plans?

A May I make a correction? If I understood your question, the implication was there that we had requested the meeting.

Q No, I understand, you testified that Wiedersum suggested the meeting?

A Yes.

Q Yes. Now, can you answer the question?

A Would you repeat your question.

(Read)

THE WITNESS: At that meeting there was no definite project in mind. We were asked if we would consider the same type of venture on another project. And I said that we would consider it only after we had observed -- or reviewed the, you know, the criteria and attended the pre-proposal conference. At no time did I say consideration meant we would put in a bid.

Q Nor did you say at any time that you would only make a decision after you saw Wiedersum's drawings on

future projects? You didn't say that at the December meeting?

A I don't think that seeing Wiedersum's drawings was ever brought in at any time, as to whether that would be a determination as to whether the bidding would go in. The intent and purpose has always been if we could prepare a satisfactory bid, which we could not.

Q Now, regarding the pre-proposal conference, you testified that it is customary for the architect to attend the conference?

A Most assuredly.

Q And you also testified that Mr. Payne told you that Wiedersum stated that they were not going to go to that particular conference?

A That is precisely what he told me.

Q Did you tell Mr. Payne that he should tell the Wiedersums that they should be there.

A Pardon?

Q Did you tell Mr. Payne to call the Wiedersums and tell them to be at the conference?

A I undoubtedly did.

Q You undoubtedly did. But you don't recall that, do you?

A I don't particularly recall that conversation

of telling him to, but we were quite cognizant of the money we were spending and we were trying to make every effort not to spend additional money.

Q Your answer is that you don't recall whether --

A That is my answer, yes.

Q Fine. Did you yourself pick up the phone and call Mr. Voorneveld and say that you thought Wiedersum should attend the pre-proposal conference?

A That I did not.

Q Now, going to the meeting of February 26th, Mr. Gleason, that you had with the Wiedersums, a number of people were at that meeting, is that right?

A Yes.

Q At least three people plus yourself from your office?

A Actually, I didn't bring out the fact that Bud Wilton, the engineer that attended the pre-construction conference was also in attendance at that meeting.

Q Bud who?

A Bud Wilton of Engineering Planning Services.

Q So there were five people from National Homes attending this meeting on February 26th?

A Five, yes.

Q And how many people from Wiedersums were

there?

A As I stated this morning, Al Voorneveld was there, Mr. Laverty was there and throughout the course of the meeting there were several of the department heads that wandered in and out and discussed meetings and got into them.

Q So there may have been as many as nine or ten people --

A There were a number of them there. The people that I was concerned with, and I met with personally and talked to, was Al Voorneveld and Laverty.

Q And at that meeting you discussed various specifications about the Sourth Carolina project, is that right?

A Very definitely. I did not mix personally with each and every man. As I say, I had people there from the various departments to discuss that very purpose.

Q And these people were discussing, the mechanics of proceeding?

A Yes, they were.

Q You knew at that meeting that Wiedersums were going to start working on plans for this project, didn't you?

A I certainly assumed they were.

Q And that was the purpose of the meeting?

A That certainly was.

Q And you knew that Wiedersum expected you to put in a bid once the plans were submitted?

A At that time we expected to also.

Q So that everybody as of February 26th, understood and expected that a bid would be submitted ?

A I think I would have to rephrase that and leave out the portion, the word "understood", I think everybody was in accord that they expected to put in a bid.

Q Now, you have testified, Mr. Gleason, that a Mr. Lundstrom --

A Bob Lundstrom, yes.

Q Mr. Lundstrom stated at this meeting that -- he was allegedly screaming that he needed two weeks time to do his thing?

A That is absolutely right.

MR. SIMMONS: Your Honor, I object to the reference allegedly in question.

THE COURT: Overruled.

Q What is it -- why don't you just explain to us how the pricing mechanism worked, what happens and when does it happen, just in a normal situation, can you explain fur us, in a turnkey type situation?

A Certainly. You establish your costs on your site development, in fact, everything that goes into it comprises or composes the contract. Your site development, your underground utilities, your gas, your electric, your storeroom, your streets, curb, gutter, sod, landscaping, everything that goes into it, everything pertaining -- garbage cans, everything that is called for in the criteria.

Q Then what happens?

A When you have assembled all these costs and hopefully you are sure, or reasonably sure that you have included all the costs and you have sufficient monies in there to to cover everything that is in, called for in the plan, then you prepare the total cost of the job, the direct job cost.

Q Isn't it a fact, Mr. Gleason, that you actually do not need to have the final plans before you begin the mechanics of pricing on a bid?

A You begin your mechanics of pricing on your takeoffs. But your takeoffs cannot be completed in any way, shape, form or manner until you have the final plans. You are going on an assumption, for example, that you will have 63 acres of land to clear and grub. On that 63 acres of land there are rules of thumb in the business

have so many lineal feet of paving, curb and gutter, and et cetera. From this you will arrive at what is known as a preliminary estimate or a feasibility estimate, if you will. This in turn is then put into the final bid, the final determination of cost by actual takeoffs from the final complete plan. And it is absolutely no way in God's green earth to finalize a cost on a project until you have the final plan.

Q Now, you testified previously regarding a meeting on March 6th with the Wiedersums, which is referred to in Plaintiff's 10, and the notes of that meeting show that certain preliminary plans were given to National on that --

A Your wording is absolutely correct, "preliminary".

Q What did Mr. Payne and Mr. Bolka do with those preliminary plans that they got at that meeting?

A They brought them back and they in turn were sent over to the Lafayette plant of the home parent to where the fabrication was going to go in for them to check and see if at that time, as far as they had gone on the preliminary plans, they were in compliance with the standards required by National Homes Corporation.

Q Isn't it a fact that you can make preliminary

investigations and preliminary pricing once you have those plans?

A Precisely as you said, you can make those, and this we have done.

Q Isn't it a fact that the price you come up with as a result of that, the only thing left to do is to double check it by a phone call once you have the final plans to make sure there is no variance.

A Pardon me.

Q Isn't it a fact that once you have that price on the basis of your preliminary designs, that the only thing remaining to do once you get the final plans is to compare them and then double check by means of a phone call to the subcontractors?

A It would be wonderful if it were that simple. When the final plans are out, and I say final plans of the sewers and et cetera, they are then put out for firm bids because in the majority of cases, contractors that are required to bid to the Government will likewise require from their subcontractors a bid bond as well as a performance bond and a subcontractor will give you neither unless he is sure of what he is bidding on. This cannot be obtained from preliminary plans.

Q Weren't many of your subcontractors your own

parent company, National Homes?

A By the very terms of the criteria, the general contractor on a military job and the percentage will vary by job, will have to do, in some cases 30 per cent, some cases 50 per cent, some cases 25 per cent, depending upon the area, and the availability of work forces and the employment conditions in that area. This is set forth in the criteria. And therefore, National was doing only that portion and the fabrication of the buildings, by the National Home Parent Corporation, was considered as that portion required. To answer your question, everything was subbed out that we could possibly sub out.

Q Let's take a few examples. What about wall panels for the actual houses, who was going to make those?

A Sir, the wall panels are a part of the components that go in and are manufactured by the Home -- by the parent corporation, National Homes Manufacturing Corporation.

Q So they are the one you were dealing with on this?

A Yes, sir. They are one of the subcontractors. We enter into a subcontract with them precisely like we do with Hinkeydink Electric.

Q And you require a bid bond from your own

parent company?

A We do not. It's rather ridiculous to get a bid bond from the corporation that in turn is backing our bond.

Q So that the problem of getting bid bonds did not apply at least with respect to the --

A Not with our parent corporation, that is affirmative.

Q And your parent corporation, they could look at the preliminary plans, and from those, is it not correct, that from those they can see the dimensions of the house, the type of siding to be used, the windows and door openings?

A That is not the case. They can look at it and they can get the approximate size of the buildings and from this they can come up with an approximate cost of it. But between the approximate and the actual, the type of siding that is on it, the type of subsheeting that is on it, does not enter in, the type of the windows does not enter in on the preliminaries. That comes in on our final. This is where your final costs are determined.

Q Did you review the preliminary plans that were brought back by Mr. Payne on the 6th?

A No. As I said the purpose of the preliminary

plans at that time were to see if Wiedersum were proceeding down the right road in compli..ce with the National Homes Manufacturing Corporation standards.

Q I see. This whole operation was just a little test for Wiedersum, is that right?

A This is as much --

MR. SIMMONS: Objection, your Honor.

A This was as much for Mr. Wiedersum's good as it was for ours. In fact, if you will go back to our meeting of the 20th that you referred to of why we had the meeting, it was could we help them, how can we help them to simplify and reduce their costs. This is one of the purposes for doing it.

Q You don't know what was on those preliminary plans that Mr. Payne brought back on March 6th, do you?

A Do I know personally?

A Yes.

A I have looked at them. I have not dissected them like I have the final plans, no.

Q Which you dissected last night?

A I had dissected them much earlier, too.

Q How long did you work last night on those plans?

A Probably an hour and a half.

Q An hour and a half?

A Probably.

Q Was anybody with you?

A They were in and out of the room.

Q Who is they?

A My attorney was there. In fact, I believe two of them were there.

Q Both Mr. Brooks and Mr. Simmons?

A Yes.

Q Was anybody else there?

A Dooley.

Q Was Mr. Bolka there?

A Mr. Bolka was in and out of there.

Q And you all sort of looked at these plans and compared them?

A At times, yes.

Q Isn't it a fact that you spent about twice as long last night looking at those plans than you ever did in the rest of your life?

A I absolutely did not.

Q Now, getting back to the plans that you brought -- that were brought back by Mr. Payne on March 6th, you cannot really say, as you sit here today, whether or not your parent company could have taken those

preliminary plans and come up with pricing on the wall panel?

A I can honestly say they could not have.

Q But you never saw the plans?

A I didn't have to see the plans. I did not have to see the plans to know that they couldn't because Bob Lundstrom called me and said they could not proceed on it.

Q When did he call you?

A That they had to have it?

Q When did he call you?

A On this I do not precisely know the exact date. Bob Lundstrom called me probably on an average of four times a week.

Q And he called you some time after March 6th and told you that he couldn't make any estimates?

A Most assuredly. In fact, he called me on several occasions wanting to know where the final plans were because they were as interested in getting the work for their plant as we were in getting the job. We were not outbidding military housing for exercise of -- or anything else. We were out to get the job.

Q I thought you said Mr. Lundstrom said at the meeting that he needed them two weeks before the bid?.

A That is absolutely right. I did not say he called me the day before. I said he called me almost continuously wanting to know where the plans were.

Q In other words, he told the Wiedersums on March 6th that he had to have them in two weeks and he called you every day from March 6th to find out where they were?

A That's correct.

MR. SIMMONS: That is not the testimony. Mr. Morrison persists in incorrectly restating the witness's testimony.

THE COURT: We are asking the witness. Don't do that, counsel. He's asking the witness. Let the witness testify.

Q What else would your parent corporation be involved in -- by the way , let me strike that. I will withdraw that. The parent corporation is National Homes, Inc.?

A No, National Homes Corporation.

Q Corporation. And they are a manufacturing corporation?

A They are the parent company and the National Homes Manufacturing Corporation is a subsidiary exactly like National Homes Construction Corporation.

Q Which one did Mr. Lundstrom work for?

A National Homes Manufacturing Corporation.

Q So it's sort of a sister company?

A Precisely.

Q And they are the ones who manufacture units for homes?

A Yes.

Q The manufacturing corporation?

A Yes.

Q The parent corporation doesn't do that?

A Not -- physically, no.

Q And they have been doing this for some time?

A Quite a number of years.

Q About how many?

A Don't really know unless you believe what they say on their trucks, 50 years or more. I don't know that. That is only what I read in their advertising.

Q It's on the truck. It must be true. And they have expertise in building homes, do they not?

A We like to think so.

Q Now, what else -- what other aspects of this housing project would be manufactured or produced by National Homes Manufacturing Corporation?

A Nothing other than the components and the --

the components in the package.

Q What about things like windows and doors?

A That would be part of your components.

Q They would manufacture them?

A They would not manufacture them, they would install them in the components.

Q In the wall components that they make?

A That's correct.

Q They didn't need a lot of time to compute prices on that, did they? They do this every day?

A Let me put it this way, I'm glad I'm sitting here not Bob Lundstrom because he'd scream his head off at you.

Q He screams a lot?

A Yes. They do need time.

Q Could they have determined the pricing on the windows and doors from the preliminary plans that were given to Mr. Payne on March 6th?

A No.

Q How do you know that they couldn't?

A Because they didn't have the sizes and window sizes and the cost of windows vary greatly from a two three to a three four to a three five.

Q How do you know they didn't have the sizes

if you never saw the plans?

A Sir? There was no reason to put them on. The preliminary plans at that time were to only -- were only on the floor plans to indicate that they would comply with the modulars as established them.

Q What about all the concrete that you need for roads and driveways and sidewalks and so forth, what do you need in order to determine the price on that?

A What do we need?

Q Yes.

A Well, we need the type of foundation. We need the grades, you know, the finished floor elevations, and the grades of the -- the finished grades of the land, so that we can know the quantity of concrete we're going to be using so we will know the depth of it, the width of it, the thickness of the walls and et cetera.

Q And this can be determined from the military plans, is that not correct?

A I really think, if you would allow me to insert the final plans you referred to on the 30th, had we submitted a bid based on those final plans, we would not be sitting in this courtroom, because we would have been so high out as a result of the details shown for your foundation walls that we wouldn't have been within five

country miles.

MR. MORRISON: I move to strike that.

THE COURT: Counsel, we have reached the point of our usual recess for the day.

MR. SIMMONS: Your Honor, Mr. Gleason has made plans to return to Florida this evening. I am wondering, is it possible that we might go on so that Mr. Morrison could perhaps conclude his examination --

THE COURT: I have the jury to deal with and all these factors. It's hard to please everyone. That is the way it goes. We will now recess until 10:15 tomorrow morning.

(Whereupon at 4:20 p.m. the case was continued to December 11, 1975.)

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	V.D.
Frederick Wiedersum	3	14	41	42	
John Gleason	47	146			119

E X H I B I T S

DEFENDANT'S	DESCRIPTION	FOR ID.	IN EV.
D	Document	15	16
E	Document	20	21
F	Document	23	24
G	Document	24	25
H	Document	25	26
I	Document	63	63

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PP. 459-624

GLEASON
BOLKA
DULEY
74-C-823
LAVERTY (rebuttal)
VOORHOULD (rebuttal)

1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

F. P. WIEDERSUM ASSOCIATES,

Plaintiff,

-against-

NATIONAL HOMES CONSTRUCTION CORP.,

Defendant.

----------X

United States Courthouse
Brooklyn, New York

December 11, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE WALTER BRUCHHAUSEN, U.S.D.J., and a jury

RAYMOND STALKER
ACTING OFFICIAL COURT REPORTER

Appearances:

MESSRS. ROGERS & WELLS
Attorneys for Plaintiff

BY: THOMAS C. MORRISON, ESQ.
Of Counsel

MESSRS. MILBANK, TWEED, HADLEY & MC CLOY
Attorneys for Defendant

BY: HARRY L. SIMMONS, ESQ.
-and-
RUSSELL E. BROOKS, ESQ.
Of Counsel

(Jury enters the jury box)

THE CLERK: Civil cause on trial, Frederick Wiedersum v. National Homes.

THE COURT: Will counsel step up to the bench?

(Discussion off the record.)

THE CLERK: Mr. Gleason recalled and previously sworn.

J O H N G L E A S O N , having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. MORRISON:

Q Mr. Gleason, you testified yesterday that as a result of this meeting with Wiedersum on March 6th that the preliminary plans were brought back and that you sent them to Lumpstroms who was with National Homes Manufacturing Corporation to have him see if they complied with National standards, is that correct?

A The plans were sent to Mr. Lumstrum. I did not personally send them.

Q Did he report back to you on whether or not the plans conformed with National's standards?

A As I said yesterday, we discussed four or five items a day, a week, and he made mention of certain items and

he mentioned them because at the meeting with him, it was to relay the information back.

Q Is it your testimony that Mr. Lumstrom's report was that part of the drawings didn't comply with National's standards?

A That's correct.

Q And was that passed on to Wiedersum's?

A That's correct.

Q By you?

A Negative. By Mr. Payne.

Q Did you hear Mr. Payne pass this on?

A Negative. This is his responsibility.

Q You don't know as you sit here today whether or not Mr. Payne in fact told Wiedersum anything about the plans not conforming to National's standards?

A I did not hear him say it. I did, however, myself on the week of the bid day call Mr. Laverty and bring out plan discrepancies to him.

Q I see. But you didn't do this at any time prior to the bid week?

A I did not personally myself.

Q Now what sort of drawing did Mr. Lonstrom have that he was looking at at this time?

A They were preliminary floor plan drawings

more than anything else. The outline of the floor --

Q The showroom layout?

A Not the dimension-wise. Merely the -- I guess you would have to say the architectural sketches showing the concept of the arrangement of the rooms, etc.

Q He had the arrangement of the rooms?

A Certainly.

Q But not the dimensions?

A That's correct.

Q Is that common practice that architects draw rooms without dimensions?

A Pardon?

Q Is it common practice that architects draw rooms or layouts without showing dimensions?

A It's not common. However, right now on the final plans all the room dimensions are not shown.

Q It's not a common practice?

A Pardon. It's not a common practice, as I say, but even on the final plans, the drawings, all of the room dimensions are not shown yet.

MR. MORRISON: I move to strike that, your Honor.

Q But you did not actually see the plans that Mr. Londstrom was looking at after March 6th; is that right?

A I said yesterday that I had seen the plans. I had no reason at that time to delve into them. That is sufficiently delved in to answer or prove any questions --

Q But you don't know of your own first-hand knowledge whether or not those rooms were laid out dimension-wise?

A Pardon?

Q You do not know of your own knowledge whether or not those plans that Mr. Lonstrom was looking at had dimensions?

A I could not now tell you that they were complete with room dimensions.

Q You can't tell me one way or the other?

A I can assume the fact that the final plans do not have the room dimensions --

MR. MORRISON: I move to strike that. We're talking about the March 6th plan.

Q Now you testified yesterday, Mr. Gleason, that during this period you yourself were busy because you were extensively bidding on other Government projects.

A We were bidding and constructing other Government projects.

Q About how many others were you working on at that time?

A Are you speaking of construction?

Q Okay, I'm sorry. How many construction jobs did you have going?

A Would you like to have me name them?

THE COURT: Yes, the number of them.

A I would have to name them, your Honor, to count them.

Q Roughly, more than five, more than ten?

A Certainly. There were two in New York. There was three projects going in Atlanta, in Georgia. There were two projects going in Ohio. The one project going in Illinois. Two projects -- excuse me, one project in Illinois. There were projects at that time underbid in Paterson Air Force Base, Scott Air Force Base.

Q These projects, were they under construction?

A The first project I spoke to you was under construction. They weren't interested in the Wright-Paterson Air Force or were the projects going --

Q The others you were preparing bids on?

A That's correct.

Q Were you working with any other outside architectural firms on those projects?

A At that time we also were preparing bids on two projects here in New York. A turnkey project and we were

working with outside architects and outside engineers.

Q So that there were at least five other projects that were in the bidding stage?

A At least.

Q At least?

A At least.

Q Were you personally involved in all of these?

A That's correct.

Q And you are personally involved in the ones under construction?

A That's correct.

Q What about Mr. Payne? Was he involved in all these other projects?

A Mr. Payne along with other men.

Q Was Mr. Payne involved in all of these that you have testified that were under construction?

A Mr. Payne is head of the estimate department. He was involved in all the projects we were working on.

Q What about Mr. Duley?

A Mr. Duley was involved in the projects likewise.

Q Both the ones that were in the bidding phase and those that were in the construction phase?

A That's correct.

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